Supreme Court, U.S.
FILED
991856 MAY 18
OFFICE OF THE CLERK

No. _____

In The

# Supreme Court of the United States

MIAMI-DADE COUNTY, through its Manager and Board of County Commissioners,

*Petitioner,*

vs.

AGRIPOST, INC., a Florida Corporation, and AGRIDADE, LTD., a Florida Limited Partnership,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## PETITION FOR WRIT OF CERTIORARI

HOLLAND & KNIGHT
701 Brickell Avenue
Suite 3000
Miami, Florida 33101-5441
Telephone: (305) 374-8500
Fax: (305) 789-7799

By: DANIEL S. PEARSON

ROBERT A. GINSBURG
*Counsel of Record*
Miami-Dade County Attorney
Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Telephone: (305) 375-5151
Fax: (305) 375-5634

By: ROBERT LOWELL KRAWCHECK
JAMES J. ALLEN
Assistant County Attorneys

*Counsel for Petitioner, Miami-Dade County*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

99pp

## QUESTIONS PRESENTED

DOES THE ELEVENTH CIRCUIT'S EXCEPTION TO THIS COURT'S RULE AGAINST REVERSING STATE COURT JUDGMENTS PREVENT STATE COURTS FROM DECIDING WHETHER REGULATORY ACTIONS SHOULD BE REVERSED AS CONFISCATORY IN ORDER TO AVOID PERMANENT TAKINGS SUCH AS THE CLAIMED $140,000,000 TAKING IN QUESTION?

IF A FEDERAL COURT LACKS JURISDICTION OVER A FEDERAL REGULATORY TAKING CLAIM BECAUSE IT IS UNRIPE, DOES THE COURT NEVERTHELESS HAVE JURISDICTION TO ADJUDICATE PRECLUSION DEFENSES?

BY HOLDING THAT A STATE TAKING CLAIM WAS NEITHER BEFORE THE COURT NOR GERMANE, DID THE ELEVENTH CIRCUIT DEPRIVE THE COUNTY OF ITS RIGHT TO APPEAL THE DISTRICT COURT'S EXERCISE OF JURISDICTION OVER, AND ITS DISPOSITION OF, THE COUNTY'S DEFENSES TO THAT CLAIM?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iv

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... 1

STATEMENT OF THE CASE ..... 2

REASONS FOR GRANTING THE PETITION ..... 6

I. IN CONFLICT WITH SUPREME COURT DECISIONS, THE ELEVENTH CIRCUIT AND THE DISTRICT COURT EXCEEDED THEIR SUBJECT MATTER JURISDICTION BY DISMISSING A FEDERAL TAKING CLAIM AS UNRIPE, INSTEAD OF PREVIOUSLY ADJUDICATED, WHERE A STATE COURT HAD ALREADY DETERMINED THAT A TAKING DID NOT OCCUR ..... 7

A. THE ELEVENTH CIRCUIT DENIED THE RIGHT OF THE STATES TO JUDICIALLY VOID TEMPORARY TAKINGS, BY HOLDING THAT AN OWNER COULD NOT RAISE A REGULATORY TAKING CLAIM UNTIL AFTER CONCLUSION OF STATE JUDICIAL REVIEW OF THE GOVERNMENTAL ACTION ..... 7

TABLE OF CONTENTS – Continued

Page

B. THE LOWER COURTS EXCEEDED THEIR JURISDICTION AND EFFECTIVELY REVERSED THE STATE COURT BY DISMISSING A FEDERAL TAKING CLAIM AS UNRIPE, INSTEAD OF PREVIOUSLY ADJUDICATED, WHERE THE STATE COURT HAD HELD THAT NO TAKING OCCURRED ..... 10

II. ASSUMING THE DISTRICT COURT LACKED JURISDICTION OVER A FEDERAL REGULATORY TAKING CLAIM BECAUSE OF UNRIPENESS, IT EXCEEDED THAT JURISDICTION BY ADJUDICATING THE COUNTY'S PRECLUSION DEFENSES ON THE MERITS, IN CONFLICT WITH SUPREME COURT CASE LAW ..... 21

CONCLUSION ..... 23

## TABLE OF AUTHORITIES

Page

CASES

*Brown & Root, Inc. v. Breckenridge*,
No. 99-1831, 2000 WL 526068 (4th Cir. 2000) ...10, 15

*Bauer v. Waste Management of Connecticut, Inc.*,
662 A.2d 1179 (Conn. 1995) ..... 18

*City of Hollywood v. Hollywood Beach Hotel*,
283 So.2d 867 (Fla. 4th DCA 1973), *aff'd in part, rev'd in part on other grounds*, 329 So.2d 10 (1976) .... 19

*City of Jacksonville v. State ex rel. Mann*,
27 So.2d 727 (Fla. 1946) ..... 17

*City of Treasure Island v. Decker*,
174 So.2d 756 (Fla. 2d DCA 1965) ..... 18

*Corn v. City of Lauderdale Lakes*,
95 F.3d 1066 (11th Cir. 1996) ..... 16

*Dade County v. National Bulk Carriers, Inc.*,
450 So.2d 213 (Fla. 1984) .....19, 20

*Dale v. Moore*,
121 F.3d 624 (11th Cir. 1997) ..... 12

*Dasher v. Supreme Court of Texas*,
658 F.2d 1045 (5th Cir. 1981) ..... 13

*Davis v. Bayless*,
70 F.3d 367 (5th Cir. 1995) ..... 13

*District of Columbia Court of Appeals v. Feldman*,
460 U.S. 462 (1983) ..... *passim*

*Federal Lands Legal Consortium v. United States*,
195 F.3d 1190 (10th Cir. 1999) ..... 17

*First English Evangelical Lutheran Church v. County of Los Angeles*,
482 U.S. 304 (1987) ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

*GASH Assocs. v. Village of Rosemont*,
995 F.2d 726 (7th Cir. 1993) ..... 13, 14

*Guess v. Board of Med. Exam'rs*,
No. 91-264-CIV-5-F, 1991 WL 352536
(E.D.N.C. Sept. 12, 1991), *aff'd*, 967 F.2d 998
(4th Cir. 1992) ..... 13

*Key Haven Associated Enterprises, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*,
427 So.2d 153 (Fla. 1982) ..... 20

*Keystone Bituminous Coal Ass'n v. DeBenedictis*,
480 U.S. 470 (1987) ..... 17

*Kunkes v. United States*,
78 F.3d 1549 (Fed. Cir. 1996) ..... 17

*Lucas v. South Carolina Coastal Council*,
505 U.S. 1003 (1992) ..... 6, 8, 9, 14, 16, 17

*Lynk v. Laporte Superior Court No. 2*,
789 F.2d 554 (7th Cir. 1986) ..... 11

*Nary v. Dean*,
32 F.3d 1521 (11th Cir. 1994) ..... 13

*Penn Central Transp. Co. v. City of New York*,
438 U.S. 104 (1978) ..... 16, 18

*Pennzoil Co. v. Texaco, Inc.*,
481 U.S. 1 (1987) ..... 10, 15

*Ritter v. Ross*,
992 F.2d 750 (7th Cir. 1993) ..... 13, 14

*Robinson v. Ariyoshi*,
753 F.2d 1468 (9th Cir. 1985),
*vacated on other grounds*,
477 U.S. 902 (1986) ..... 11

TABLE OF AUTHORITIES – Continued

Page

*Rooker v. Fidelity Trust Co.*,
263 U.S. 413 (1923) ..... *passim*

*Smalleylogics Corp. v. Dade County*,
176 So.2d 574 (Fla. 3d DCA 1965) ..... 17

*State Dept. of Envtl. Protection v. Burgess*,
667 So.2d 267 (Fla. 1st DCA 1995) ..... 17

*Steel Co. v. Citizens for a Better Env't*,
523 U.S. 83 (1998) ..... 22

*Town of Esopus v. State*,
631 N.Y.S.2d 213 (N.Y. Ct. Cl. 1995) ..... 18

*Treister v. City of Miami*,
893 F. Supp. 1057 (S.D. Fla. 1992),
*aff'd* Case No. 95-5173 (May 15, 1995)
(unpublished) ..... 15, 22

*Villas of Lake Jackson, Ltd. v. Leon County*,
121 F.3d 610 (11th Cir. 1997) ..... 16

*Williamson County Regional Planning Comm'n v. Hamilton Bank*,
473 U.S. 172 (1985) ..... 5, 7, 9, 14

*Wood v. Orange County*,
715 F.2d 1543 (11th Cir. 1983) ..... 11, 12

CONSTITUTIONAL PROVISIONS

U.S. Const., Art. IV, Sec. 1 ..... 1

U.S. Const., Amend. V ..... 1, 14, 15, 16

U.S. Const., Amend. XIV, Sec. 1 ..... 1

Fla. Const., Art. VIII, Sec. (a) ..... 2

TABLE OF AUTHORITIES – Continued

Page

Fla. Const., Art. VIII, Sec. (e) ..... 2

Fla. Const., Art. VIII, Sec. (f) ..... 2

Fla. Const., Art. VIII, Sec. 11 (1885) ..... 2

STATUTES

28 U.S.C. Sec. 1254(1) ..... 1

28 U.S.C. Sec. 1257(a) ..... 10

28 U.S.C. Sec. 1331 ..... 1, 2, 11

28 U.S.C. Sec. 1332 ..... 11

28 U.S.C. Sec. 1334(b) ..... 1, 2

28 U.S.C. Sec. 1367(a) ..... 1, 2

28 U.S.C. Sec. 1367(d) ..... 1

28 U.S.C. Sec. 1738 ..... 2, 13, 22

42 U.S.C. Sec. 1983 ..... 2

OTHER AUTHORITIES

Miami-Dade County Home Rule Amendment and Charter, Sec. 1.02(A) ..... 2

Code of Miami-Dade County, Florida, Sec. 33-314 ..... 2, 20

Suzanna Sherry, *Judicial Federalism in the Trenches: The Rooker-Feldman Doctrine in Action*, 74 Notre Dame L. Rev. 1085 (1999) ..... 13

Gary Thompson, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42 Rutgers L. Rev. 859 (1990) ..... 13

## PETITION FOR WRIT OF CERTIORARI

Miami-Dade County respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, at 1) is reported at 195 F.3d 1225 (11th Cir. 1999). The opinion of the district court (App. 23) is unreported.

## JURISDICTION

The court of appeals entered its order on November 15, 1999. App. 1. After timely motions for rehearing and rehearing *en banc* were denied on February 18, 2000, the court of appeals entered its judgment on the same date. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Art. IV, Sec. 1

U.S. Const., Amend. V

U.S. Const., Amend. XIV, Sec. 1

28 U.S.C. Sec. 1331

28 U.S.C. Sec. 1334(b)

28 U.S.C. Sec. 1367(a), (d)

28 U.S.C. Sec. 1738

42 U.S.C. Sec. 1983

Fla. Const., Art. VIII, Secs. (a), (e) (including Footnote 3, which sets forth Fla. Const. Art. VIII, Sec. 11 (1885)), and (f)

Miami-Dade County Home Rule Amendment and Charter, Sec. 1.02(A)

Code of Miami-Dade County, Florida, Sec. 33-314

## STATEMENT OF THE CASE

Agripost sued Miami-Dade County in the United States District Court for the Southern District of Florida on September 29, 1994. The jurisdiction of the federal court was invoked under 28 U.S.C. Secs. 1331, 1367(a), and 1334(b). Agripost claimed, *inter alia*, that the County had taken its property without just compensation, in violation of both the United States and the Florida Constitutions.

Agripost had held a conditional, revocable unusual use zoning approval, which the County had issued in 1987 for Agripost to operate a garbage-to-fertilizer plant.[1] Agripost had entered into a similarly conditioned, revocable lease with the state to conduct that sole use on state property adjacent to an elementary school.

---

[1] An unusual use is one of the various kinds of zoning approvals, including variances, district boundary changes, etc., issued and revoked by Miami-Dade County, Florida pursuant to its overall zoning ordinance, Chapter 33, Code of Miami-Dade County, Florida. *See, e.g.*, App. 51.

Although Agripost had initially represented to the County that its process could not pollute, the plant created an unbearable vile stench; inhalable, finely-ground, airborne garbage particles; uncontrollable slimy black mold throughout the school; and asthma, vomiting and other ailments of the school children. Agripost therefore later admitted that it had created a public health pollution nuisance. AF2-331-332.[2]

That nuisance violated the express conditions of Agripost's revocable zoning approval. Agripost proposed a cure, which would have been (a) at the County's expense (R1-1-19, ¶59); (b) in further violation of the conditional zoning approval (R-1-1-47, ¶137(e)); and (c) a threat of further pollution. R1-1-124. After quasi-judicial public hearings, the County revoked the conditional, unusual use zoning.

Agripost appealed to the Florida Circuit Court. It argued, *inter alia*, that reversal was required under Florida law because "[b]oth the federal and State Constitutions provide that the Legislature shall not take property without due process of law and just compensation." AF3-31. Agripost argued that a taking had *already occurred* because the County's action had caused the plant to close

---

[2] Citations to the record on appeal include the records of prior State court proceedings contained in accordion folders (AF1-4) and lettered appendices and pages therein. All emphasis is supplied herein unless otherwise noted. Footnotes and citations are generally omitted from quotations.

down on January 17, 1991, and had "destroyed the $30 million investment." AF3-177, 171.

The Florida Circuit Court concluded, *inter alia*, that Agripost had failed to comply with the conditions and could not practicably cure the violations. App. 59. Noting Agripost's "asserted $30,000,000 loss," *i.e.*, taking claims, the Florida court affirmed the zoning revocation, rejecting Agripost's taking claims in several respects as a matter of law. The Florida Third District Court of Appeal denied certiorari on September 21, 1992. App. 60.

Two years later, Agripost filed the present action in federal district court, reasserting, *inter alia*, its state and federal just compensation taking claims, and inflating its damages claim to $140 million. The County moved to dismiss, and alternatively for summary judgment, contending, *inter alia*, that the federal action effectively sought review and reversal of the Florida circuit court's adjudication, and was therefore jurisdictionally prohibited under the *Rooker-Feldman* doctrine.[3] Alternatively, the County argued that Florida res judicata and collateral estoppel law barred the claims.

The district court rejected the County's jurisdictional arguments as to both the state and federal taking claims,

---

[3] The *Rooker-Feldman* doctrine provides that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). The doctrine extends to claims "inextricably intertwined" with the state court's judgment. *Feldman* at 483 n.16.

applying an "exception" fashioned by the Eleventh Circuit to *Rooker-Feldman*. App. 29. The district court then dismissed the *federal* taking claim as jurisdictionally *unripe* under *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985). Although the court held that it *could* not exercise jurisdiction over the jurisdictionally "unripe" federal taking claim (App. 34), and that it *would* not exercise jurisdiction over the state taking claim (App. 34-35), it nonetheless exercised jurisdiction over both claims by rejecting the County's preclusion defenses to those claims on the merits. App. 28. Agripost then refiled the action in state court, contending that the County was now itself foreclosed from raising its preclusion defenses. *See* App. 9.[4]

The County appealed, again arguing lack of subject matter jurisdiction over both the federal and state taking claims pursuant to the *Rooker-Feldman* doctrine. Regarding the federal taking claim, the appellate court upheld the district court's application of the Eleventh Circuit exception to the *Rooker-Feldman* doctrine. The court affirmed that a Fifth Amendment taking claim could not have ripened until the conclusion of the state litigation, and Agripost " 'did not have a reasonable opportunity to raise' " its Fifth Amendment claim in the state litigation. App. 7.

---

[4] The present Petition, and all subsequent filings assume *arguendo* that the federal court decisions have the effect Agripost contends. However, the County reserves the right to raise any and all defenses and arguments in any and all proceedings.

The Eleventh Circuit also expanded its exception to *Rooker-Feldman* to disallow application of that jurisdictional doctrine unless the prior state court judgment "unambiguously disposes of a federal constitutional claim." App. 6 n.7. The Eleventh Circuit thus disallowed altogether the County's appeal related to the state taking claim holding that said claim was neither "before the court," nor "germane to this appeal." App. 2 n.1. The Eleventh Circuit also held that even though the district court lacked subject matter jurisdiction over the purportedly unripe federal taking claim, it properly adjudicated the merits of the County's preclusion defenses to that very claim, to the prejudice of the County in the pending state court litigation. App. 9 n.11.

## REASONS FOR GRANTING THE PETITION

This Petition is brought because the Eleventh Circuit has created conflict among no fewer than four important Supreme Court doctrines: (1) *First English*,[5] which recognizes not only an owner's right to just compensation for temporary takings, but also the right of states to determine whether regulatory action should be reversed as confiscatory and so avoid permanent takings; (2) *Rooker-Feldman*, which prohibits federal district courts from exercising jurisdiction to review state court adjudications; (3) *Lucas*,[6] which recognizes that no compensable taking

[5] *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987).

[6] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

exists where the "rights" lost were not part of the claimant's title to begin with; and (4) *Williamson County*, which bars the exercise of federal question jurisdiction over unripe just compensation claims.

The Eleventh Circuit's effective rewriting of all these doctrines to conflict with one another has led it to require the Florida courts to permit, and the County to face, unnecessary extensive relitigation of issues that have been already decided by the Florida courts. Allowing the Eleventh Circuit opinion to stand will perpetuate unnecessary conflict among the foregoing decisions of this Court, with enormous jurisprudential and financial consequences both in this case and beyond.

## I. IN CONFLICT WITH SUPREME COURT DECISIONS, THE ELEVENTH CIRCUIT AND THE DISTRICT COURT EXCEEDED THEIR SUBJECT MATTER JURISDICTION BY DISMISSING A FEDERAL TAKING CLAIM AS UNRIPE, INSTEAD OF PREVIOUSLY ADJUDICATED, WHERE A STATE COURT HAD ALREADY DETERMINED THAT A TAKING DID NOT OCCUR.

### A. THE ELEVENTH CIRCUIT DENIED THE RIGHT OF THE STATES TO JUDICIALLY VOID TEMPORARY TAKINGS, BY HOLDING THAT AN OWNER COULD NOT RAISE A REGULATORY TAKING CLAIM UNTIL AFTER CONCLUSION OF STATE JUDICIAL REVIEW OF THE GOVERNMENTAL ACTION.

In *First English*, this Court expressly recognized the existence of a claim for a "temporary taking." Such a claim exists even though the regulatory action may be

stricken so that a *permanent* taking is never effected. The Court rejected the holding of the California Court of Appeals that "a landowner who claims that his property has been 'taken' by a land use regulation may not recover damages *for the time before it is finally determined that the regulation constitutes a 'taking'* of his property." 482 U.S. at 306-07. " '[T]emporary' takings which, as here, deny a landowner all use of his property, *are not different in kind from permanent takings*, for which the Constitution clearly requires compensation." *Id.* at 318.

While recognizing a property owner's right to compensation for temporary regulatory takings, this Court made it clear that states have the corresponding right to void confiscatory regulations, and cannot be forced by property owners to effect permanent takings:

> [T]he landowner has no right under the Just Compensation Clause to insist that a "temporary" taking be deemed a permanent taking.
>
> . . . .
>
> Once a court determines that a taking has occurred, the government retains *the whole range of options* already available [including] withdrawal of the invalidated regulation. . . .

*Id.* at 317, 321. Clearly the "whole range of options" includes judicial reversal of the regulatory action, if affirmance would convert a temporary taking to a permanent taking. *See Lucas*, 505 U.S. at 1027 n.17 ("the state may elect to rescind its regulation and thereby avoid having to pay compensation for a permanent deprivation").

In the Florida court, Agripost asserted, as grounds for reversal, taking claims under both the United States

and Florida Constitutions. The Florida court rejected these claims as a matter of law. *See infra* at 16-19. In conflict with *First English*, however, the Eleventh Circuit held that, under *Williamson County*, a taking claim, whether permanent *or* temporary, cannot be asserted until after the conclusion of the state court appeal. The Court held that an essential taking allegation was that "the [Florida] Circuit *Court's decision* . . . effectively rendered Agripost's property . . . worthless. . . . " App. 13. The Court thus held that a pre-existing temporary taking cannot be asserted as a basis for avoiding a permanent taking until after the taking has already become permanent.

The precedent created by the Eleventh Circuit's opinion prevents state courts from considering taking allegations for the purpose of preventing *permanent* regulatory takings as authorized by this Court in *First English* and *Lucas*. This departure from Supreme Court precedent not only subjects Miami-Dade County to a $140,000,000 taking claim in the present case, but also subjects innumerable state regulatory authorities to incalculable liability for permanent regulatory takings – a result never sanctioned by this Court.

### B. THE LOWER COURTS EXCEEDED THEIR JURISDICTION AND EFFECTIVELY REVERSED THE STATE COURT BY DISMISSING A FEDERAL TAKING CLAIM AS UNRIPE, INSTEAD OF PREVIOUSLY ADJUDICATED, WHERE THE STATE COURT HAD HELD THAT NO TAKING OCCURRED.

Under this Court's long-standing *Rooker-Feldman* doctrine, federal district courts lack jurisdiction to review and reverse state court adjudications either directly or indirectly. The doctrine applies wherever a claim in federal court is "inextricably intertwined" with *any* state court adjudication. *Feldman*, 460 U.S. at 482 n.16 (1983). Unlike preclusion, *Rooker-Feldman* is not confined to identity of claims or issues, but more broadly preempts practically conflicting results. A federal claim is inextricably intertwined with a state adjudication "if the federal *claim* succeeds only to the extent that the state court wrongly decided the *issues* before it." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring); *see also, e.g., Brown & Root, Inc. v. Breckenridge*, No. 99-1831, 2000 WL 526068 at *3 (4th Cir. 2000) (holding that the "inextricably intertwined" prong of the doctrine bars a *claim* that was not actually decided by the state court but where "success on the federal *claim* depends upon a determination that the state court wrongly decided the *issues* before it").

The *Rooker-Feldman* lack of jurisdiction is rooted in two fundamental components of federal court jurisdiction. First, Congress has vested the authority to review state court judgments in this Court alone. *See* 28 U.S.C. Sec. 1257(a); *Feldman*, 460 U.S. at 482. Second, Congress has empowered the federal district courts to exercise only

original jurisdiction. *See, e.g.*, 28 U.S.C. Sec. 1331, 1332; *Rooker*, 263 U.S. at 416.

In the present case, as discussed *supra*, the lower courts found, contrary to *First English*, that no ripe Fifth Amendment taking issue, temporary or otherwise, could have been asserted to the Florida courts during the zoning appeal. The district court then applied "an exception" to *Rooker-Feldman* which the Eleventh Circuit had created in *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983), to avoid a potential denial of due process where a litigant had neither notice nor an opportunity to participate in prior litigation.[7] App. 29. The lower court thereby expanded the "reasonable opportunity to raise" exception to encompass the totally different circumstances of the present case. Here not only did Agripost fully participate in the state court proceedings, but also the due process claim, itself, was held by the district court to be barred by *Rooker-Feldman*. App. 29-30.

The Eleventh Circuit affirmed and applied the "unripeness-lack of opportunity to raise" exception to *Rooker-Feldman* in rejecting res judicata: "Our conclusion that the *Rooker-Feldman* doctrine is inapplicable forecloses the County's res judicata defense . . . Agripost did not have an opportunity to present the claim; it could not have done so until judicial review . . . had run its course."

---

[7] Some other circuits have attempted to follow suit. *See, e.g., Robinson v. Ariyoshi*, 753 F.2d 1468, 1472 (9th Cir. 1985), *vacated on other grounds*, 477 U.S. 902 (1986); *Lynk v. Laporte Superior Court No. 2*, 789 F.2d 554, 564-65 (7th Cir. 1986) (*Rooker-Feldman* not applied where it was not shown that there was a realistic opportunity to raise his federal grounds in state court).

App. 15-16. The Court then extended its exception beyond *Wood* and res judicata. It established, as an additional prerequisite to applying *Rooker-Feldman*, that the state court judgment have "unambiguously dispose[d] of a federal constitutional claim." App. 6 n.7. As sole authority for that novel proposition, the court cited only its own opinion in *Dale v. Moore*, 121 F.3d 624 (11th Cir. 1997), which holds nothing of the sort.[8]

The Eleventh Circuit has thus created an "exception" to *Rooker-Feldman* based upon either the purported prior unripeness, or the failure to unambiguously dispose, of a federal constitutional claim. Therefore, even though the claim presently being asserted is "inextricably intertwined" with a prior state court adjudication under *Feldman*, the federal district court nevertheless has authority to effectively reverse the state court if either circumstance exists.

This is not the first time the Eleventh Circuit, or its predecessor, has improperly expanded federal district

---

[8] The court did add that the *Rooker-Feldman* doctrine "not only bars review of claims that were actually litigated in state court, but also bars those that are 'inextricably intertwined' with the state court judgment." App. 6 n.7. However, it is clear that the inextricably intertwined test is only to be applied if it is first determined that there was both ripeness and unambiguous disposition of a federal constitutional claim. For example, because the federal taking claim was unripe during the state litigation, the court held that the *Florida* taking claim, which had been extensively litigated in the Florida courts, was not even "germane" to the County's appeal (App. 2 n.1), *i.e.*, that it was immaterial whether the present federal taking claim was "inextricably intertwined" with the prior adjudication of the *state* taking claim.

and circuit court jurisdiction in conflict with *Rooker-Feldman*. Indeed, it was in *Feldman* itself that this Court was forced to correct the Fifth Circuit's (the Eleventh Circuit's predecessor) attempt, in *Dasher v. Supreme Court of Texas*, 658 F.2d 1045 (5th Cir. 1981), to equate the subject matter jurisdiction question at hand with actual raising of a federal constitutional claim. *Id.* at 482 n.16. This brought about the "inextricably intertwined" test, which the Eleventh Circuit now largely circumvents.[9]

---

[9] The circuit and district courts have been varied and inconsistent in their understanding of *Rooker-Feldman*. At one extreme, the Eleventh Circuit in the present case has limited the doctrine to res judicata, *i.e.*, preclusion of a previously ripe claim. *Cf. Nary v. Dean*, 32 F.3d 1521 (11th Cir. 1994) (holding doctrines are distinct). Other courts have recognized the unique jurisdictional nature of *Rooker-Feldman*. *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993) (holding that *Rooker-Feldman* and res judicata "are not coextensive," and discussing Seventh Circuit case law including *Ritter v. Ross*, 992 F.2d 750 (7th Cir. 1993) ("State law permitted . . . a collateral attack on the judgment. . . . Thus Sec. 1738 [full faith and credit] did not interdict sequential litigation. . . . There was no jurisdiction to wage that collateral attack in *federal* court." *Id.* at 728); *Guess v. Board of Med. Exam'rs*, No. 91-264-CIV-5-F, 1991 WL 352536 at *6 (E.D.N.C. Sept. 12, 1991), *aff'd*, 967 F.2d 998 (4th Cir. 1992) (*Rooker-Feldman* "includes within its ambit principles of preclusion"); *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995) (merging doctrines, holding that *Rooker-Feldman* does not bar an action "when that action would be allowed in the state court of the rendering state").

Commentators have joined in on both sides of the debate. *Cf., e.g.*, Suzanna Sherry, *Judicial Federalism in the Trenches: The Rooker-Feldman Doctrine in Action*, 74 Notre Dame L. Rev. 1085 (1999) (arguing for importance and uniqueness of *Rooker-Feldman*) with Gary Thompson, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42

The Eleventh Circuit combined its restrictive rewriting of *Rooker-Feldman* with a misreading of *First English, Williamson, Lucas,* and Florida law. Applying its new "unambiguous disposition" prerequisite, the court narrowed the dispositive issue to whether "Agripost's Fifth Amendment takings claim was *actually litigated* in the [Florida] Circuit Court (and decided against Agripost). . . . " App. 12. The court concluded that a federal taking claim could not ripen until after the conclusion of the state proceedings, because an essential allegation was that "the [Florida] Circuit *Court's decision* . . . effectively rendered Agripost's property . . . worthless. . . . " App. 13. Effectuating its new "unambiguous disposition" prerequisite, the court never even reached the "inextricably intertwined" test.

The foregoing allegation predicated upon Florida court action, which the Eleventh Circuit finds essential to *establishing* jurisdiction would, in the Seventh Circuit, be *jurisdictionally barred* by *Rooker-Feldman* as an attack upon a state court judgment. *GASH, supra,* found that *Rooker-Feldman* prohibits federal jurisdiction where a plaintiff effectively "objects to the outcome of a judicial proceeding [and] has no claim independent of the state court's adverse decision. . . . " 995 F.2d at 727, 729. Agripost's injury, like *GASH*'s, "was caused *by* the judgment, just as in *Rooker, Feldman,* and *Ritter* [*v. Ross,* 992 F.2d 750 (7th Cir. 1993)]." *Id.* at 729.

Under any analysis, the Eleventh Circuit rendered meaningless one clearly dispositive issue, *viz.*, whether

---

Rutgers L. Rev. 859 (1990) (arguing that *Rooker-Feldman* is redundant and unnecessary).

the state court judgment decided critical issues against Agripost such that its federal taking claim could succeed only to the extent that the state court wrongly decided the issues before it. *See, e.g., Pennzoil* and *Brown*. Although the Florida Circuit Court did not decide each and every potential element of a Fifth Amendment taking claim, this is not required in order for *Rooker-Feldman* to apply, nor, indeed, for a taking claim, itself, to fail. The Eleventh Circuit considered it immaterial that the Florida courts adjudicated several essential common elements of both a state and federal taking claim that would be "reversed" if Agripost's federal taking claim were to succeed.

The Florida and federal taking claims clearly have common essential elements, *see, e.g., Treister v. City of Miami*, 893 F. Supp. 1057, 1067 (S.D. Fla. 1992), *aff'd*, Case No. 95-5173 (May 15, 1995) (unpublished)[10] However, under its new *Rooker-Feldman* prerequisite of unambiguous disposition of a ripe federal constitutional claim, the Eleventh Circuit expressly found that neither the

---

[10] The *Treister* court held:

> We have no doubt that the issues raised by a claim for taking, and the elements of the claim, under the Florida Constitution, are sufficiently similar to the parallel claim under the United States Constitution so as to constitute *identical claims for res judicata purposes, and that the issues necessarily litigated therein are sufficiently identical for issue preclusion purposes* . . . . It is axiomatic that the Constitutions of the United States and the State of Florida require that just and full compensation be paid in the event of a taking. U.S. Const. Amend. V; Art. X; Sec. 6(a), Fla. Const.

893 F. Supp. at 1067-1068.

question of the adjudication of the *state* taking claim, nor the impact of that adjudication upon the *federal* taking claim, was before the Court or germane to the appeal. App. 2 n.1].

The Florida court had rejected Agripost's taking claims through several holdings that Agripost's federal complaint effectively sought to reverse. First, the Florida circuit court essentially found, as a matter of Florida law, that Agripost, which owned *no* real property, had only the narrowest of conditional, revocable rights to public land, which were not "taken." *Lucas* held that government cannot take away claimed property "rights" that never existed, such as the "right" to create a nuisance that harms neighboring property or the public. 505 U.S. 1027-29. *See also Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 130 (1978) (rejecting as "quite untenable" the suggestion that a taking is established simply by showing that a landowner has been denied the ability to exploit a particular property interest); *Villas of Lake Jackson, Ltd. v. Leon County*, 121 F.3d 610, 614 (11th Cir. 1997) (holding "right against excessive regulation does not encompass separate protection of individual strands in the bundle of property rights"); *Corn v. City of Lauderdale Lakes*, 95 F.3d 1066, 1074 (11th Cir. 1996) (holding that the "property" subject to the Fifth Amendment's prohibition . . . does not include every single property interest recognized by the law).

In *Lucas*, this Court reaffirmed its traditional deference to state definitions of the nature and scope of private property interests, a deference which was not followed by the Eleventh Circuit. Thus, if a property restriction repeats or enforces limitations inherent in the title, the

restriction never effects a taking. *Lucas* at 1026-27; *see, e.g., Federal Lands Legal Consortium v. United States*, 195 F.3d 1190 (10th Cir. 1999) (holding that grazing permits are not property for purposes of either the Takings Clause or the Due Process Clause); *Kunkes v. United States*, 78 F.3d 1549, 1550 (Fed. Cir. 1996) (holding that plaintiffs did not have a valid takings claim because they did not follow statutory requirements to maintain claim); and *Smalleylogics Corp. v. Dade County*, 176 So.2d 574, 577-78 (Fla. 3d DCA 1965) (rejecting a property owner's contention that it had a vested property right in a conditional zoning approval). The Florida court negated a compensable taking as a matter of law citing, *inter alia*, *Smalleylogics*, because Agripost lacked a protected property interest, and, in any event, relinquished any such claim by violating the original conditions of zoning approval.

Second, the Florida court's affirmance was based upon the existence of "obnoxious odors . . . for an unreasonable length of time . . . which verified the non-compliance with conditions." App. 58. Agripost's proscribed and admitted nuisance activities "were not part of [its] title to begin with." *Lucas* at 1027. Thus, it can never be a taking to forbid uses that are barred by "background principles" of either property law or nuisance law. *Id.* at 1029; *see also Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 505-6 (1987) (compensation not required where regulation prevents harm or danger or restrains activities tantamount to public nuisance); *City of Jacksonville v. State ex rel. Mann*, 27 So.2d 727 (Fla. 1946) (holding that government "retains plenary power to protect its citizens by abating a nuisance if and when that condition should occur"); *State Dept. of Envtl. Protection v.*

*Burgess*, 667 So.2d 267, 271 (Fla. 1st DCA 1995) (holding that "[h]armful or noxious uses of property can be proscribed by government regulation without the requirements of compensation"); *City of Treasure Island v. Decker*, 174 So.2d 756 (Fla. 2d DCA 1965) (holding that zoning regulation which denied construction of a facility that would constitute a public nuisance was not arbitrary, unreasonable, confiscatory, or unconstitutional).

Third, based upon background principles of Florida law and undisputed fact, the Florida court found that Agripost was "always on notice" of the consequences of its actions. App. 59. Therefore, as a matter of law, Agripost could not have an investment-backed expectation of a right to violate zoning conditions and avoid revocation. *See Penn Central*, 438 U.S. at 124; *see also, e.g., Bauer v. Waste Management of Connecticut, Inc.*, 662 A.2d 1179, 1198 (Conn. 1995) (finding that where landfill secured expansion permit from the state only to have the expansion later revoked, there had been no taking because it was a gamble to go forward with the plan in light of the pervasive regulatory climate); *Town of Esopus v. State*, 631 N.Y.S.2d 213, 215 (N.Y. Ct. Cl. 1995) (holding that where state refused to renew landfill's license, no duty to pay since taking occurs "only if [the state's] actions destroyed a claimant's previously vested, *unconditional* right to use the land in a certain way, and, even then, only if there is no other viable use to which the land can be put"). Clearly, as a matter of law, Agripost could have no reasonable investment-backed expectation to support a taking claim where its property interest included – indeed, was defined by – the County's right to revoke, and the Florida courts so held.

Fourth, the Florida court rejected Agripost's claim of a taking of a vested right, by expressly holding that the County was not estopped to revoke the conditional revocable zoning. App. 59.[11]

In flagrant conflict with *Rooker-Feldman*, the Eleventh Circuit effectively overturned all of the foregoing adjudications of the Florida court. While addressing the federal taking claim the Eleventh Circuit held that the Florida court's "task was limited to one question: whether the Board's revocation of Agripost's permit was justified." App. 14. The Court did not explain what it meant by "justified." Further, as discussed *supra*, the Court totally excluded from its consideration the Florida court's adjudication of the Florida taking claim.

The Eleventh Circuit exacerbated the conflicts with established Supreme Court precedent by effectively reversing longstanding Florida Supreme Court case law. The governmental action in issue was an unusual use zoning resolution – precisely one of the kinds of zoning action involved in *Dade County v. National Bulk Carriers, Inc.*, 450 So.2d 213, 214, 215 (Fla. 1984).[12] In *National Bulk*,

---

[11] Under Florida law estoppel is equivalent to the taking of a vested property right. *City of Hollywood v. Hollywood Beach Hotel*, 283 So.2d 867, 869 (Fla. 4th DCA 1973), *aff'd in part, rev'd in part on other grounds*, 329 So.2d 10 (1976).

[12] This petition should be granted on broad legal and policy grounds independent of the Eleventh Circuit's failure to give effect to Florida Supreme Court case law. Nevertheless, this failure to afford full faith and credit underscores the deleterious and far-reaching consequences of the Eleventh Circuit's failure to abide by this Court's precedents. The County repeatedly urged that if the Eleventh Circuit had any doubt as to the

the Florida Supreme Court mandated that the Florida Circuit Court, in an appeal from a Miami-Dade County unusual use zoning action, must make "a determination of whether the County's action is confiscatory and constitutes a taking without just compensation, in which event the action of the board *must be stricken.*" *Id.* at 216.

The Eleventh Circuit "distinguished" the present case, holding that it was controlled by *Key Haven Associated Enterprises, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 427 So.2d 153 (Fla. 1982), which pertained to a statutory dredge and fill permit. App. 17. The Eleventh Circuit believed that *National Bulk* pertained only to an ordinance. *Id.* In fact, it is facially apparent that both *National Bulk* and the present case involved the *identical kind of zoning action* – a Miami-Dade County unusual use zoning resolution. *See National Bulk* at 214, 215.

Moreover, *National Bulk* expressly distinguished *Key Haven* as not controlling except as to its holding that a zoning action or ordinance is "by definition, *invalid if it is confiscatory.*" *Id.* at 216 (emphasis in original, quoting *Key Haven* at 159). The Florida Supreme Court made it clear that this rule pertained not only to an ordinance itself, but also to "the *application* of a zoning ordinance." *Id.* at 216. The County's unusual use zoning permit action in *National Bulk*, like that in the present case, was but an application of the County's overall zoning ordinances, pursuant to which *all* zoning actions are taken by resolution. Code of Miami-Dade County, Florida, Sec. 33-314(b),

---

applicability of *National Bulk* to Agripost's zoning appeal, it should have certified the matter to the Florida Supreme Court.

at App. 54. Thus, under *National Bulk*, when the Circuit Court affirmed Agripost's zoning revocation, it *necessarily* rejected Agripost's taking claim.

With regard to the *state* taking claim, the Court went even further in applying its exceptions to *Rooker-Feldman*. The Eleventh Circuit prohibited the County from appealing, either as to jurisdiction or on the merits, the district court's adverse adjudication of the County's preclusion defenses to the state taking claim. App. 2 n.1. Although the district court had declared that it would not exercise jurisdiction over the state taking claim (App. 34-35), it adversely decided the County's preclusion defenses to that claim. App. 28. The Eleventh Circuit's response to the County's appeal of that decision was simply to hold that the state taking claim in its entirety was neither before the Court nor germane. App. 2 n.1. The Court thus deprived the County of its right to appeal. The Eleventh Circuit's expanded exception to *Rooker-Feldman* thus eviscerates the basic right to appeal both from a district court's exercise of jurisdiction and its substantive adjudication.

## II. ASSUMING THE DISTRICT COURT LACKED JURISDICTION OVER A FEDERAL REGULATORY TAKING CLAIM BECAUSE OF UNRIPENESS, IT EXCEEDED THAT JURISDICTION BY ADJUDICATING THE COUNTY'S PRECLUSION DEFENSES ON THE MERITS, IN CONFLICT WITH SUPREME COURT CASE LAW.

The Eleventh Circuit and the district court below not only exceeded their jurisdiction by effectively reversing a *past* state court adjudication, but also by affirmatively invading the province of the state courts with regard to

*future* state court litigation. While affirming the dismissal of Agripost's alleged federal taking claim because it was found to *remain* jurisdictionally unripe, the Eleventh Circuit noted that the district court's substantive adjudications would bar Florida preclusion law defenses in the subsequent state litigation. App. 9. Assuming *arguendo* the Fifth Amendment taking claim was jurisdictionally unripe, these adjudications exceed the court's jurisdiction. They also substantively violate the requirement to afford full faith and credit to state court adjudications. 28 U.S.C. Sec. 1738.[13]

The Eleventh Circuit expressly affirmed where "[a]lthough the district court *ultimately* dismissed [for lack of subject matter jurisdiction], *it first considered – and rejected – Dade County's res judicata and collateral estoppel defenses.*" App. 9. This holding is in direct conflict with some of the most unequivocal pronouncements known to Supreme Court jurisprudence. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, *the only function remaining to the court is that of announcing the fact and dismissing the cause.* . . . The

---

[13] *See, e.g., Treister v. City of Miami*, 893 F. Supp. 1057, 1067 (S.D. Fla. 1992), *aff'd*, Case No. 95-5173 (May 15, 1995) unpublished:

> [The circuit] court entered summary judgment for the City on the basis that the prior [zoning appeal] was res judicata of the issues raised in *Treister*'s [separate taking] action. He now appeals claiming that changed circumstances have entitled him to relief in his original [taking] action. We disagree.

requirement that jurisdiction be established as a threshold matter . . . *is inflexible and without exception.*"); *see also Feldman* at 482 n.16 (holding that once a court lacks jurisdiction, it has "no power whatever" over the merits).

In condoning this exercise of jurisdiction over defenses to an unripe claim, the Eleventh Circuit equated the elimination of lack of ripeness with the absence of preclusion. App. 15. First, as shown *supra*, under *First English*, Agripost's claim that a "temporary" taking had *already occurred* was *not* unripe. Therefore, the federal taking *claim*, as well as the state taking claim, was properly before the Florida court. Second, collateral estoppel, or *issue* preclusion, applies precisely to prevent the readjudication of dispositive issues, regardless of whether a subsequent claim was ripe at the time of the prior adjudication.

The Eleventh Circuit's negation of state preclusion law along with its unripeness exception to *Rooker-Feldman* not only creates new federal court jurisdiction to review state court adjudications, but also requires federal courts to reach the *merits* of these claims by negating state preclusion law. This is a vast, unprecedented expansion of federal district court jurisdiction, which completes the erasure of the boundaries of federal jurisdiction, and cries out for correction by this Court.

## CONCLUSION

The Petition should be granted to harmonize several important doctrines of federal jurisdiction and regulatory takings. The conflicts sanctioned by the Eleventh Circuit

portend both vast future federal district court interference with state court judgments and the exercise of jurisdiction over unripe claims. These conflicts create the potential for the incalculable liability of innumerable regulatory authorities for permanent taking never intended by either the United States Supreme Court, the state courts, or the persons whose property has been permanently taken. The writ should issue.

Respectfully submitted,

HOLLAND & KNIGHT
Suite 3000
701 Brickell Avenue
Miami, Florida 33101-5441
Phone: (305) 374-8500

By: DANIEL S. PEARSON
Florida Bar Number 062079

ROBERT A. GINSBURG
Miami-Dade County Attorney
Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Phone: (305) 375-3771
Fax: (305) 375-5634

By: ROBERT L. KRAWCHECK
Florida Bar Number 128019

and

JAMES J. ALLEN
Florida Bar Number 317861

## APPENDIX

## TABLE OF CONTENTS

A. Opinion to be Reviewed

*Agripost, Inc., et al. versus Miami-Dade County,* United States Eleventh Circuit Court of Appeals, Case No. 97-5654, Opinion dated November 15, 1999 .....App. 1

*Agripost, Inc., et al. versus Miami-Dade County,* United States Eleventh Circuit Court of Appeals, Case No. 97-5654, Judgment dated November 15, 1999 .....App. 19

*Agripost, Inc., et al. versus Miami-Dade County,* United States Eleventh Circuit Court of Appeals, Case No. 97-5654, Order Correcting Opinion dated December 14, 1999.....App. 21

B. Other Opinions in the Case

*Agripost, Inc., et al. versus Metropolitan Dade County,* United States District Court, Southern District of Florida, Case No. 94-2031-Civ-Davis, Opinion dated September 5, 1997 .....App. 23

C. Orders Denying Rehearing

*Agripost, Inc. et al. versus Miami-Dade County,* United States Eleventh Circuit Court of Appeals, Case No. 97-5654, Order Denying Appellant's Petition for Rehearing dated February 18, 2000.....App. 36

*Agripost, Inc., et al. versus Miami-Dade County,* United States Eleventh Circuit Court of Appeals, Case No. 97-5654, Order Denying Petition for Rehearing En Banc dated February 18, 2000 .....App. 37

## APPENDIX

## TABLE OF CONTENTS – Continued

D. Constitutional Provisions, Statutes and Ordinances:

U.S. Const., Art. VI, Sec. 1.....App. 39

U.S. Const., Amend. V.....App. 39

U.S. Const., Amend. XIV, Sec. 1.....App. 39

28 U.S.C. Sec. 1331..... App. 41

28 U.S.C. Sec. 1334(b).....App. 41

28 U.S.C. Sec. 1367(a), (d).....App. 41

28 U.S.C. Sec. 1738..... App. 42

42 U.S.C. Sec. 1983..... App. 43

Fla. Const., Art. VIII, Sec. (a), (e) (including Footnote 3, which sets forth Fla.Const. Art. VIII, Sec. 11 (1885)), and (f).....App. 44

Miami-Dade County Home Rule Amendment and Charter, Sec. 1.02(A) .....App. 50

Code of Miami-Dade County, Florida, Sec. 33-314 .....App. 51

E. Other Material Essential to Understanding the Petition

*Agri-Dade, Ltd., vs. Metropolitan Dade County,* Circuit Court of the Eleventh Judicial Circuit of Florida, Appellate Division, Case No. 91-214-AP, Opinion dated June 5, 1992.....App. 57

*Agri-Dade, Ltd., vs. Metropolitan Dade County,* Florida Third District court of Appeal, Case No. 92-01525, Order dated September 21, 1992 .....App. 60

# APPENDIX A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 97-5654

---

D.C. Docket No. 94-2031-CV-EBD

AGRIPOST, INC., a Florida
Corporation, AGRI-DADE, LTD.,
a Florida Limited Partnership,

Plaintiffs-Appellees,

versus

MIAMI-DADE COUNTY, through
its Manager and Board of
County Commissioners,

Defendant-Appellant.

---

Appeal from the United States District Court
for the Southern District of Florida

---

**(November 15, 1999)**

Before TJOFLAT and EDMONDSON, Circuit Judges, and KRAVITCH, Senior Circuit Judge.

TJOFLAT, Circuit Judge:

In 1987, the Board of Commissioners of Dade County, Florida, granted Agripost, Inc. an unusual use zoning permit for the construction and operation of a waste

disposal facility. In 1991, the Dade County Zoning Appeals Board revoked the permit. After an appellate panel of the Dade County Circuit Court affirmed the revocation, and the Florida District Court of Appeal declined review, Agripost brought this suit against Dade County, claiming that the revocation constituted a taking without just compensation, in violation of the Fifth and Fourteenth Amendments.[1] The district court dismissed Agripost's takings claim as unripe because Agripost had failed to pursue Florida's inverse-condemnation remedy. The County now appeals,[2] contending that the district court should have dismissed Agripost's takings claim under the *Rooker-Feldman* doctrine[3] for want of subject matter jurisdiction, or, alternatively, granted it summary judgment on the ground that principles of res judicata and collateral estoppel barred the claim. We agree with the district court that Agripost's takings claim was unripe. We therefore affirm its dismissal of the suit.

---

[1] Agripost's complaint contained several other claims based on the revocation of Agripost's permit. In its order dismissing Agripost's taking claim as unripe, the district court concluded that Agripost's other claims were legally insufficient and directed the entry of final judgment in the County's favor on all claims. With the exception of an equal protection claim, which we address in note 9 *infra*, none of these other claims are before us or are germane to this appeal.

[2] *See infra* part II.

[3] The *Rooker-Feldman* doctrine derives from *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923), and reserves to the United States Supreme Court the authority to review final decisions from a state's highest court. *See also infra*, note 6.

I.

In 1986, Dade County's Board of Commissioners (the "Board") sought proposals for the construction and operation of a waste disposal plant that would create an environmentally safe, useful end product from the county's solid waste. Agripost submitted a proposal, which the Board subsequently accepted. Agripost then leased a site for its facility.[4] Because the site was zoned for agricultural use, Agripost needed to obtain an unusual use zoning permit from the Board before it could construct and operate the plant. Agripost therefore applied for such a permit. On March 5, 1987, the Board approved Agripost's application, but made its approval subject to several conditions. One condition required Agripost to operate its facility in accordance with the plot use plan to be devised by Agripost and approved by the County's Zoning Director. Another required Agripost to comply with all "conditions and requirements" of Dade County's Department of Environmental Resource Management ("DERM"),[5] which included specific

---

[4] Agripost's plant would convert garbage to agricultural fertilizer by grinding the garbage into small particles and then applying chemicals that enhanced the natural decay of the resulting waste. The site that Agripost selected for this facility abutted Dade County's landfill and was near the County's transfer station from which waste was distributed to disposal facilities. Unfortunately, the site was located in a residential neighborhood and was adjacent to an 800-student elementary school.

[5] DERM reviewed Agripost's permit application and issued a memorandum detailing a list of requirements that were in turn incorporated as conditions in the Board's resolution authorizing the unusual use zoning permit.

requirements for the storage of waste products, and that the facility not cause a nuisance.[6]

Agripost's facility began operating in the fall of 1989, and soon thereafter, area residents began complaining that finely ground waste particles were emanating from the plant and that a vile stench covered the area. According to officials from an adjacent elementary school, a "black, thick glue-like mold" was covering nearly every surface of the school, and students and teachers alike were developing various illnesses.

In October 1990, DERM informed Agripost that its facility was creating a nuisance; DERM alleged both that noxious odors were emanating from the plant, and that Agripost was storing waste products in a manner contrary to the conditions of its permit and in a location other than that prescribed by the plot use plan. The County's Building and Zoning Department ("B&Z") then initiated procedures to revoke Agripost's unusual use zoning permit; B&Z issued zoning violation notices that alleged that Agripost had breached the conditions of its permit, and requested a hearing before the Zoning Appeals Board ("ZAB") to determine whether the permit should be revoked. After a hearing on January 16, 1991, the ZAB concluded that Agripost had failed to comply

---

[6] On July 7, 1987, Agripost and Dade County signed an agreement for the construction and operation of the facility (the "Agreement"). The Agreement set out the amount of waste that the County would deliver per week to Agripost and the compensation that Agripost would receive for disposing of the waste. The Agreement also incorporated the conditions that the Board had placed on its approval of the unusual use zoning permit.

with the conditions of its unusual use permit, and therefore revoked it. The Board affirmed the ZAB's decision.

Having exhausted its administrative remedies, Agripost appealed the Board's decision to a three-judge panel of the appellate division of the Dade County Circuit Court (the "Circuit Court"). After reviewing the administrative record, the court concluded that Agripost had failed to comply with the conditions of its permit; the court therefore affirmed the revocation of Agripost's permit. The Florida District Court of Appeal thereafter denied Agripost's petition for certiorari review. *See Agri-Dade, Ltd. v. Metropolitan Dade County*, 605 So.2d 1272 (Fla. 3d DCA 1992).

On September 29, 1994, Agripost brought the present lawsuit against Dade County in the United States District Court for the Southern District of Florida. Agripost claimed that by revoking the permit, the Board, and therefore Dade County, deprived it of all economically viable use of its leasehold interest, of its facility, and of its rights under the Agreement. Because the County had not provided just compensation, Agripost contended, the permit revocation constituted a taking in violation of the Fifth and Fourteenth Amendments.

In response, Dade County, citing the *Rooker-Feldman* doctrine, which reserves to the United States Supreme Court the authority to review final decisions from a state's highest court, moved the district court to dismiss Agripost's takings claim for lack of subject matter jurisdiction. According to the County, the Circuit Court

decided Agripost's takings claim in affirming the revocation of Agripost's permit. The County moved alternatively for summary judgment on the grounds of res judicata and collateral estoppel. It contended that (1) res judicata barred the takings claim because the claim was either litigated or should have been litigated in the Circuit Court proceeding, and (2) collateral estoppel barred the takings claim because a factual issue essential to the takings claim was resolved against Agripost in the Circuit Court.[7]

---

[7] Although res judicata, collateral estoppel, and *Rooker-Feldman* are separate doctrines, they have a "close affinity" to one another. *Valenti v. Mitchell*, 962 F.2d 288, 297 (3d Cir. 1992). In considering whether to give preclusive effect to state court judgments, federal courts must apply the state's law of collateral estoppel. *See Vazquez v. Metropolitan Dade County*, 968 F.2d 1101, 1106 (11th Cir. 1992). Under res judicata, a final judgment "bars a subsequent suit between the same parties based upon the same cause of action and is conclusive as to all matters germane thereto that were or could have been raised." *Hoechst Celanese Corp. v. Fry*, 693 So.2d 1003, 1006 n.9 (Fla. 3d DCA 1997). Collateral estoppel bars identical parties from relitigating issues that were actually adjudicated in a prior proceeding. *See Florida Dep't of Revenue v. Ferguson*, 673 So.2d 920, 922 (Fla. 2d DCA 1996). Under the *Rooker-Feldman* doctrine only the United States Supreme Court has the authority to review a final state court judgment that unambiguously disposes of a federal constitutional claim. *See Dale v. Moore*, 121 F.3d 624, 626 (11th Cir. 1997). The doctrine not only bars review of claims that were actually litigated in state court, but also bars those that are "inextricably intertwined" with the state court judgment. *Feldman*, 460 U.S. at 482 n.16, 103 S. Ct. at 1315 n.16. A federal claim is intertwined with the state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co. v. Texaco, Inc.* 481 U.S. 1, 25, 107 S. Ct. 1519, 1533, 95 L. Ed. 2d 1 (1987) (Marshall, J., concurring).

The district court, on its own initiative and over Dade County's objection, dismissed as unripe Agripost's takings claim, because Agripost had failed to pursue the inverse-condemnation remedy that Florida provided to property owners who, like Agripost, alleged that an administrative decision rendered their property worthless. In the district court's view, the Supreme Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-97, 105 S. Ct. 3108, 3120-22, 87 L. Ed. 2d 126 (1985), required Agripost to pursue that remedy before it could make a Fifth Amendment takings claim.[8]

In deciding that Agripost's takings claim was not ripe, the district court addressed the questions whether it should dismiss the claim for want of subject matter jurisdiction under the *Rooker-Feldman* doctrine or, instead, entertain the claim on the merits and reject it on grounds of res judicata and collateral estoppel. Citing an exception to the *Rooker-Feldman* doctrine, the court concluded without elaboration that that doctrine did not apply because Agripost "did not have a reasonable opportunity to raise [its claim for compensation] before the Circuit Court." Similarly, the district court stated that res judicata and collateral estoppel did not apply because Agripost's

---

[8] In *Williamson*, the Supreme Court noted that "[t]he Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation." *Williamson*, 473 U.S. at 194, 105 S. Ct. at 3120. Thus, the Court concluded, if the state has established a process for obtaining compensation, the property owner cannot prosecute a takings claim under the Fifth and Fourteenth Amendments unless he alleges that the state process is inadequate.

appeal of the permit revocation to the Circuit Court did not include a separate cause of action for inverse condemnation.[9]

Although Dade County prevailed in the district court, it is Dade County, not Agripost, that now appeals the district court's judgment. Dade County asks that we affirm the district court's dismissal of Agripost's takings claim, but that we do so on grounds that the district court rejected – namely, that the claim is barred by the *Rooker-Feldman* doctrine, res judicata, and collateral estoppel. We conclude that the district court correctly determined that Agripost's takings claim was unripe. We therefore affirm its dismissal of the claim.

II.

As a threshold matter, we must determine whether Dade County has standing to appeal the district court's judgment. Because the district court dismissed Agripost's suit, the County was the prevailing party below. Ordinarily, the prevailing party does not have standing to appeal because it is assumed that the judgment has caused that party no injury. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 333, 100 S. Ct. 1166, 1171, 63 L. Ed. 2d 427 (1980); *Ashley v. Boehringer Ingelheim Pharms. (In re DES Litigation)*, 7 F.3d 20, 23 (2d Cir. 1993). An exception to this rule exists, however, when the prevailing party is prejudiced by the collateral estoppel effect of the district

---

[9] In reaching this conclusion, the district court effectively denied the County's motion for summary judgment based on the affirmative defenses of res judicata and collateral estoppel.

court's order. In such a case, the litigant has been aggrieved by the judgment and has standing to appeal. *See Ashley*, 7 F.3d at 23.

This exception applies in the present case. Here, although the district court ultimately dismissed Agripost's takings claim, it first considered – and rejected – Dade County's res judicata and collateral estoppel defenses. Unless it is set aside, the court's ruling regarding those defenses will have a preclusive effect in pending litigation that is likely to prejudice Dade County. Following the district court's ruling that Agripost's takings claim had not been litigated in the Circuit Court and therefore was unripe, Agripost brought a takings claim in state court.[10] Because the district court rejected the County's collateral estoppel and res judicata defenses, the County will be precluded from raising those same defenses in the state court proceeding.[11] In other words,

---

[10] The state court proceeding has been stayed pending the outcome of this appeal.

[11] In this case, the Florida court would look to federal claim preclusion law in determining whether to give the former federal judgment preclusive effect. *See Andujar v. National Property and Cas. Underwriters*, 659 So.2d 1214, 1216 (Fla. 4th DCA 1995) ("We agree with defendant to the extent that federal claim preclusion law governs, rather than Florida's. Whenever res judicata is asserted, the court in the second forum is bound to give the former judgment the same preclusive effect that the rendering court would give it."). A district court's ruling has a preclusive (collateral estoppel) effect on subsequent litigation only if "(1) the issue [is] identical in both the prior and current action; (2) the issue was actually litigated; (3) the determination of the issue was critical and necessary to the judgment in the prior action; and (4) the burden of persuasion in the subsequent action [is not] significantly heavier." *SEC v. Bilzerian (In re*

the County would be precluded from arguing that Agripost had already raised and lost its takings claim. Thus, Dade County has standing to appeal the district court's judgment.[12]

---

*Bilzerian)*, 153 F.3d 1278, 1281 (11th Cir. 1998). The district court's resolution of Dade County's res judicata and collateral estoppel defenses satisfies these criteria. First, because the takings claim that Agripost has filed in state court is identical to the one presently before us, the question whether res judicata and collateral estoppel bar the claim is also identical. Second, these two defenses were clearly litigated in the district court. Third, the district court's ruling regarding those defenses was necessary to its judgment; the essence of the defenses is that Agripost's takings claim had already been litigated in the Circuit Court, and the resolution of that issue was necessary to the district court's ruling that the takings claim was unripe. Fourth, the burden of persuasion in the pending state court action is no heavier than the burden that existed in the district court. Thus, unless it is set aside, the district court's ruling will preclude Dade County from relitigating those defenses.

[12] In addition to the takings claim, Agripost's complaint raised a claim under the Fourteenth Amendment's Equal Protection Clause. The district court dismissed this claim for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Although Dade County appeals the district court's dismissal of that claim on the ground that the court instead should have dismissed it under the doctrines of res judicata, collateral estoppel, and *Rooker-Feldman*, we conclude that the County has not been aggrieved by the district court's disposition of this claim. The district court's judgment prevents Agripost from relitigating its equal protection claim in another proceeding; consequently, there is no collateral estoppel effect that could be prejudicial to the County. We therefore make no further mention of Agripost's equal protection claim.

III.

Before we address the County's alternative arguments that the district court should have either (1) dismissed Agripost's takings claim for want of subject matter jurisdiction, as required by the *Rooker-Feldman* doctrine, or (2) entertained the claim on the merits and granted summary judgment on the ground that the claim was barred by principles of res judicata or collateral estoppel, we think it necessary to recall what a property owner must allege in order to state a claim that a local entity has effected a regulatory taking of his property without just compensation in violation of the Fifth Amendment.

First, the property owner must allege that the governmental action – here, the revocation of a permit to operate a waste disposal plant – has "denie[d] all economically beneficial or productive use of" his property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015, 112 S. Ct. 2886, 2893, 120 L. Ed. 2d (1992). In other words, the governmental action must have made the property worthless.

Second, the property owner must allege either that the state law provides him no process for obtaining just compensation (such as an action for inverse condemnation) or that the state law appears to provide such process, but due to state court interpretation, the process is inadequate.[13] If the property owner makes either allegation, then his Fifth Amendment takings claim is ripe. If,

---

[13] An example of how a state law – adequate on its face – could provide an inadequate remedy because of a state court's (the trial court's and/or the appellate court's) interpretation

on the other hand, he makes neither allegation (and cannot do so because the state law affords an adequate process for obtaining just compensation), his Fifth Amendment takings claim is not ripe. If such a claim is pending in federal district court, the district court must dismiss it for lack of subject matter jurisdiction since the owner has failed to establish an Article III "case or controversy." *See Reahard v. Lee County*, 30 F.3d 1412, 1417 (11th Cir. 1994) ("It follows that '[a]s a practical matter, *Williamson* precludes litigation of the merits of a just compensation claim in federal court unless the state declines to provide adequate procedures through which an aggrieved party might seek compensation.' ") (quoting *New Port Largo, Inc. v. Monroe County*, 985 F.2d 1488, 1496 (11th Cir. 1993) (Tjoflat, C.J., specially concurring)). With the foregoing principles in mind, we turn to Dade County's argument that Agripost's Fifth Amendment takings claim was actually litigated in the Circuit Court (and decided against Agripost)[14] and, therefore, that the

---

would be if the state law provided an inverse condemnation action to remedy a taking, but the state court interpreted the law as capping the property owner's damages at less than the value of what was taken. In such a case, the state court's interpretation of the law would render the remedy inadequate to provide "just compensation" within the meaning of the Fifth Amendment.

[14] State courts of general jurisdiction, such as the Dade County Circuit Court, have the authority, if not a duty, to entertain the federal constitutional claims presented to them. Whether the three-judge Circuit Court that decided Agripost's appeal of the permit revocation would have had jurisdiction to consider Agripost's takings claim is problematic, as we point out in the text *infra*.

*Rooker-Feldman* doctrine required the district court to dismiss the claim for want of subject matter jurisdiction.

If Agripost's Fifth Amendment takings claim was actually litigated and decided against Agripost in the Circuit Court, the Circuit Court's decision must have come after that court affirmed the County's revocation of Agripost's permit. That is because without the revocation of the permit, Agripost could not have claimed that the County's action denied Agripost all economically beneficial or productive use of its property. At that point, Agripost had to have filed a pleading (with the Circuit Court) alleging the following:

> The Circuit Court's decision affirming the County's revocation of the permit effectively rendered Agripost's property (its leasehold, its plant, and its rights under the Agreement) worthless; Florida law provides no adequate procedure, such as an action for inverse condemnation, for obtaining just compensation; because Florida law is deficient in this respect, Agripost has a ripe Fifth Amendment takings claim, and is entitled to just compensation.

The Circuit Court thereafter would have had to acknowledge Agripost's pleading, entertain Agripost's takings claim on the merits, and deny relief. The court would have denied relief because it found that the property had not been rendered worthless.

We conclude that the Circuit Court did not acknowledge, and therefore did not litigate, Agripost's takings claim for two reasons. First, the record is devoid of any indication that Agripost presented such a claim to the

Circuit Court after the court affirmed the Board's revocation of Agripost's permit.[15] Specifically, we find no allegation by Agripost to the effect that its property had been rendered worthless and that Florida provided no adequate process for obtaining just compensation. Nor is there any indication that the Circuit Court noticed a takings claim on its own initiative and, having done so, rejected it as legally insufficient.

Second, the Circuit Court lacked the authority to determine the takings issue. The Circuit Court's task was limited to one question: whether the Board's revocation of Agripost's permit was justified. The court was not called upon to determine whether there had been a Fifth Amendment taking. A Fifth Amendment takings claim could not have materialized until the Circuit Court passed on the propriety of the Board's revocation of Agripost's permit. *See Lake Lucerne Civic Ass'n Inc., v. Dolphin Stadium Corp.*, 878 F.2d 1360, 1370 (11th Cir. 1989) ("The point is that the propriety of the agency action must be finally determined before a claim for inverse condemnation exists.") (quoting *Albrecht v. State,* 444 So.2d 8, 12 (Fla. 1984)). Only after the Circuit Court affirmed the Board's decision and the Florida District Court of Appeal denied Agripost certiorari review could Agripost have claimed that the revocation of the permit rendered its property worthless.[16] *See id.* In sum, the

---

[15] Nor is there any indication that Agripost presented the Circuit Court with a Fifth Amendment takings claim prior to the court's decision affirming the revocation of Agripost's permit.

[16] The allegation that the property had become worthless could not be made until the revocation of the permit became

takings issue was not – nor could it have been – entertained by the Circuit Court in its appellate review of the Board's action on Agripost's permit. Consequently, the *Rooker-Feldman* doctrine did not require the district court to dismiss Agripost's takings claim.

We next turn to Dade County's claim that the district court should have granted it summary judgment on the ground that res judicata barred Agripost's claim. Res judicata bars a subsequent suit between the same parties based on the same cause of action. It applies to (1) all matters that were actually raised, and (2) all matters that could have been raised in the prior suit. *See Hoechst Celanese Corp.*, 693 So.2d at 1006 n.9; *ICC Chem. Corp. v. Freeman*, 640 So.2d 92, 93 (Fla. 3d DCA 1994). The County claims that res judicata barred the takings claim because Agripost actually raised (and the Circuit Court actually adjudicated) that claim; alternatively, Dade County contends that res judicata applied because Agripost had an opportunity to present that claim to the Circuit Court.

Unfortunately for Dade County, our conclusion that the *Rooker-Feldman* doctrine is inapplicable forecloses the County's res judicata defense. First, as we have observed, the Circuit Court did not adjudicate a takings claim, because Agripost did not present one to the court. Second, Agripost did not have an opportunity to present the claim; it could not have done so until judicial review (of

---

effective; that is, when the Circuit Court affirmed the Board's decision and the Florida District Court of Appeal denied Agripost's petition for certiorari on September 21, 1992. *See Agri-Dade*, 605 So.2d at 1272.

the Board's action) in the Circuit Court and in the Florida District Court of Appeal had run its course.

Finally, we consider Dade County's contention that the takings claim was barred by collateral estoppel. The County asserts that the district court should have granted it summary judgment on the basis of that defense because the Circuit Court, in reviewing the permit revocation, found that the Board's action had not rendered Agripost's property worthless. The necessary result of this finding, the County contends, is that Agripost's Fifth Amendment takings claim fails as a matter of law. The County's argument proceeds as follows.

In *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 321, 107 S. Ct. 2378, 2389, 9 L. Ed. 2d 250 (1987), the Supreme Court recognized that state courts have the power to strike down zoning actions that are confiscatory, thereby subjecting the local government to liability for a temporary taking only. In Florida, a zoning ordinance that effectively confiscates property is void. *See Dade County v. National Bulk Carriers Inc.*, 450 So.2d 213, 216 (Fla. 1984). According to the County, this rule also applies in a case involving the denial of a permit; thus, if the denial is confiscatory, it is void. Therefore, in reviewing the County's action in the instant case, the Circuit Court was required to set aside the Board's action if it was confiscatory.[17] Under the County's view of

---

[17] In reviewing the propriety of the Board's revocation of Agripost's permit, the Circuit Court was required to determine "whether the essential requirements of the law have been observed." *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). The County contends that an essential requirement of the law was that the Board's action not be confiscatory.

the law, because the Circuit Court affirmed the Board's action, it necessarily found that the action was not confiscatory – that is, Agripost was not deprived of all productive use of its property. Given this finding, Dade County contends, collateral estoppel precluded Agripost from establishing in the district court an indispensable element of its takings claim (that the Board's action rendered its property worthless), and the court should have granted the County summary judgment.

Dade County's argument is correct in part; certain zoning actions are invalid under Florida law if they are confiscatory. What the County fails to recognize, however, is that this rule only applies to zoning ordinances, not to permit denials or revocations that constitute a proper exercise of the local government's police power. *See Key Haven Associated Enters., Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 427 So.2d 153, 159 (Fla. 1982). In the proceeding before the Circuit Court, whether the Board's revocation of Agripost's permit effectively confiscated its property was irrelevant; the question before the court was whether the revocation was within the scope of the Board's police power. The court answered the question in favor of the County. Because the Circuit Court did not consider whether the Board's action would, if permitted to stand, effectively confiscate Agripost's property, the district court correctly held that collateral estoppel did not bar Agripost's Fifth Amendment takings claim.

IV.

At last, we turn to the question whether the district court properly dismissed Agripost's takings claim as unripe. We conclude that it did. Agripost failed to allege in the district court (as it failed to allege in the Circuit Court) either that Florida provided no process for obtaining just compensation or that the process it provided was inadequate. Agripost's Fifth Amendment claim was not ripe for review; therefore, the district court properly dismissed it for want of subject matter jurisdiction.

AFFIRMED.

**United States Court of Appeals**
For the Eleventh Circuit

---

No. 97-5654

---

District Court Docket No. 94-2031-CV

AGRIPOST, INC., a Florida Corporation,
AGRI-DADE, LTD., a Florida Limited Partnership,

Plaintiffs-Appellees,

versus

MIAMI-DADE COUNTY, through its
Manager and Board of County Commissioners,

Defendant-Appellant.

---

Appeal from the United States District Court
for the Southern District of Florida

---

(Filed Nov. 15, 1999)

Before TJOFLAT and EDMONDSON, Circuit Judges, and KRAVITCH, Senior Circuit Judge.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

It is further ordered that defendant-appellant pay to plaintiffs-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: November 15, 1999
For the Court: Thomas K. Kahn, Clerk

By: /s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: MAR 02 2000

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

---

No. 97-5654

---

AGRIPOST, INC., a Florida Corporation,
AGRI-DADE, LTD., a Florida Limited Partnership,

Plaintiff-Appellees,

versus

MIAMI-DADE COUNTY, through its
Manager and Board of County Commissioners,

Defendant-Appellant,

---

On Appeal from the United States District Court
for the Southern District of Florida

---

(Filed Dec. 14, 1999)

Before TJOFLAT and EDMONDSON, Circuit Judges, and KRAVITCH, Senior Circuit Judge.

BY THE COURT:

Appellee's motion to correct the opinion is GRANTED. Footnote one of the opinion is corrected to read: "Agripost's complaint contained several other claims based on the revocation of Agripost's permit. With the exception of an equal protection claim, which we address in note 12 *infra*, none of these other claims are before us or are germane to this appeal."

Appellant's motion to file enlarged petitions for rehearing and for rehearing en banc is GRANTED.

/s/ _____

---

# APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

AGRIPOST, INC., a Florida corporation and AGRI-DADE, LTD., a Florida limited partnership,

Plaintiffs,

v.

METROPOLITAN DADE COUNTY,

Defendant.
_____/

CASE NO. 94-2031-CIV-DAVIS
MAGISTRATE JUDGE JOHNSON

(Filed Sep. 5, 1997)

BEFORE THE COURT is Metropolitan Dade County's Motion to Dismiss or, in the alternative, Motion for Summary Judgment (D.E. 10). After due consideration of the parties' memoranda of law and oral argument, the Court will dismiss the federal claims and decline to exercise supplemental jurisdiction over the state claims.

## I. Factual Background

In July 1987, the Dade County Board of Commissioners ("Board") and Agripost, Inc. entered into a contract for construction of a demonstration facility to convert municipal solid waste into compost.[1] Before executing the contract, Agripost worked with Dade County staff to locate a site for the facility. Complaint at ¶ 27. Agripost

[1] The Contract was subsequently assigned to Agri-Dade. Complaint at 23.

selected a site on the west side of Northwest 47th Avenue, adjacent to a state-owned school for individuals with disabilities, a "halfway house" detention center for women operated by the State of Florida, and an elementary school surrounded by single-family homes. *See* Zoning Hearing File at 22, 95. The State of Florida, owner of the site, was leasing it to the Florida Department of Health and Rehabilitative Services ("HRS"). Complaint at ¶ 28.

On October 28, 1986, Agripost entered into a long-term lease of the site with HRS.[2] The lease also gave Agripost an option to lease up to thirty additional acres within a defined tract adjoining the site (the "adjacent site"). The lease provided that it would become void should Agripost fail to obtain a contract to construct and operate a resource recovery facility within six months of its effective date. Complaint at ¶ 31. In addition, HRS had the option to terminate the lease if the site was not used for a resource recovery facility. Complaint at ¶ 31. Upon termination, all buildings on the site would pass to HRS without any compensation to Agripost. Complaint at ¶ 31.

Following execution of the lease, Dade County's Building and Zoning Department ("B&Z") advised Agripost that it would need an unusual use permit to operate the resource recovery facility on the site, which was zoned for agricultural use. Complaint at ¶ 32. B&Z also informed Agripost that it would not need a permit to

---

[2] On July 8, 1988, Agri-Dade became the lessee of the site pursuant to an assignment approved by the State of Florida and HRS. Complaint at 29.

store composted product in the adjacent site. Complaint at ¶ 34.

Agripost then applied for an unusual use permit to build and operate the facility on the site. Complaint at ¶ 34. The Board of County Commissioners approved the unusual use permit on March 5, 1987, in Resolution Z-63-87.[3] The approval was expressly subject to certain conditions, including:

. . .

> 2. That in approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Dade County MSW Composting Facility Agripost, Inc." . . .
>
> 3. That the use be established and maintained in accordance with the approved plan.
>
> . . .
>
> 8. That the applicant comply with all conditions and requirements of the Department of Environmental Resources Management.

Resolution Z-63-87. Paragraph 8 incorporated various conditions, including 1) that the compost product be covered and stored on an impermeable base, 2) that the operation of the composting facility not cause a nuisance, and 3) that no solid waste or compost products be stored outdoors where they could be exposed to rainfall. *See*

---

[3] A group of citizens appealed Resolution Z-63-87, arguing the proposed use was incompatible with the neighborhood. *Concerned Citizens of Carol City, Inc. v. Metropolitan Dade County and Agripost, Inc.*, Circuit Court No. 87-139 AP. Complaint at 37. The state court affirmed the Board's decision.

Motion Appendix A at 47 (Department of Environmental Resources Management Memorandum dated February 24, 1987).

On July 7, 1987, the County and Agripost entered into a contract for construction of a demonstration facility to convert municipal solid waste into compost.[4] Complaint at ¶ 23. The contract incorporated the provisions of the unusual use permit approval. Contract at ¶ 3.01. The contract also contained a provision regarding "obnoxious odors" which stated: " . . . continual generation of obnoxious odors, if not corrected within a reasonable time after written notice by the County, shall constitute a default by Agripost." Complaint at ¶ 50.

In October 1990, the Department of Environmental Resources Management ("DERM") notified Plaintiffs that the facility was generating obnoxious odors and creating a nuisance. Complaint at ¶ 54. DERM then ordered Plaintiffs to submit, among other things, an odor control plan for approval. DERM approved a modified version of Plaintiffs' plan on December 10, 1990. Complaint at ¶ 57. Plaintiffs and the County then discussed a possible contract amendment that would enable Plaintiffs to implement the Odor Control Plan.[5] At a December 20, 1990 meeting, the Board voted to reject the proposed amendment. Complaint at ¶ 65.

---

[4] The Contract was subsequently assigned to Agri-Dade. Complaint at 23.

[5] The proposed amendment would increase some of the "tipping fees" the County was required to pay under the original contract.

In the meantime, Dade County's Building and Zoning Department ("B&Z") issued violation notices and applied for a hearing before the Zoning Appeals Board ("ZAB"), claiming Plaintiffs had violated Conditions No. 2, 3 and 8 of the unusual use zoning resolution. Complaint at ¶ 70. The ZAB held a revocation hearing on January 16, 1991 and voted to revoke the unusual use, finding that Plaintiffs had, in fact, violated these conditions. Complaint at ¶ 78. Plaintiffs closed the plant the following day and appealed the ZAB's decision to the Board of Commissioners. Complaint at ¶ 81. After a hearing on May 23, 1991, the Board affirmed the ZAB's decision.

On July 10, 1991, Agri-Dade appealed the Board's order to the Appellate Division of the Circuit Court for the Eleventh Judicial Circuit of Florida. On June 5, 1992, the Circuit Court affirmed the Board's action. *Agri-Dade, Ltd. v. Metropolitan Dade County,* Case No. 91-214-AP ("The County's decision must be affirmed because . . . Agri-Dade is found by the substantial competent evidence test not to have complied with the conditions of the resolution, therefore justifying the County's revocation").

On July 6, 1992, Agri-Dade petitioned the Florida Third District Court of Appeal for a writ of certiorari. The Third District denied the petition without comment on September 21, 1992. Plaintiffs subsequently filed for bankruptcy protection under Chapter 11 of the federal Bankruptcy Code. Complaint at ¶ 31.

On September 29, 1994, Plaintiffs filed the present action, asserting the following federal and state law

claims: inverse condemnation under the Fifth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 (Count I), inverse condemnation under Florida law (Count II), violations of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Section 1983 (Count III), 4) violations of their procedural due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and Section 1983 (Count IV), violations of Fl. Stat. § 405.7063 (Count VI), breach of contract (Count VII), and equitable estoppel (Count VIII).[6]

## II. Preclusion

### a. Preclusive Effects of Prior Litigation on Federal Claims

The County argues that the Florida Circuit Court's decision has a preclusive effect on Plaintiff's federal claims in the present action. This argument is premised on the *Rooker-Feldman* doctrine, as well as principles of res judicata and collateral estoppel. After considering the prior state court litigation in the context of each of these doctrines, the Court rejects the County's argument with respect to Plaintiffs' inverse condemnation and equal protection claims (Counts I & III). However, the Court concludes the *Rooker-Feldman* doctrine bars Plaintiffs' procedural due process claim (Count IV).

---

[6] The Complaint originally asserted a claim for violations of substantive due process rights under the Fourteenth Amendment to the U.S. Constitution and Section 1983 (Count V). Plaintiffs are no longer pursuing this claim. Response at 29 n.10.

The *Rooker-Feldman* doctrine provides that a federal district court may not review the final decisions of a state court of competent jurisdiction. *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-416 (1923). The rule applies "not only to claims actually raised in the state court, but also to claims that were not raised in the state court but are 'inextricably intertwined' with the state court's judgment." *Feldman*, 460 at 482 n.16. The Eleventh Circuit has recognized an exception to the rule when the plaintiff has no "reasonable opportunity to raise his federal claim in the state proceedings." *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996). Under those circumstances, the federal claim is not considered "inextricably intertwined" with the state court judgment. *Id.*

In considering Plaintiff's due process claim, the Court notes that the Appellate Division of the Circuit Court reviewed the County's action pursuant to Florida Rule of Appellate Procedure 9.030(c)(3). This rule requires the Circuit Court to determine (1) whether procedural due process was accorded, (2) whether the essential requirements of the law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla. 1982). By affirming the County's action, the Circuit Court necessarily determined that no procedural due process violation had occurred. Under the *Rooker-Feldman* doctrine, this Court may not re-determine whether Plaintiffs' procedural due process rights were violated. *Baggs v. City of South Pasadena*, 947 F.Supp. 1580, 1583 (M.D. Fla. 1996).

Accordingly, the Court will dismiss Plaintiffs' procedural due process claim.

Plaintiffs' remaining federal claims – equal protection and inverse condemnation – fall within the exception to the *Rooker-Feldman* doctrine, because Plaintiffs did not have a reasonable opportunity to raise these arguments before the Circuit Court. This Court will not have to review the state court judgment to consider these claims.

Similarly, the doctrine of res judicata does not bar Plaintiffs' equal protection and inverse condemnation claims. Res judicata precludes relitigation of claims that were actually litigated or could have been litigated in an earlier suit. Under Florida law, the following elements must be present for the doctrine to apply: 1) identity of the thing sued for, 2) identity of the cause of action, 3) identity of parties, and 4) identity of the quality in the person for or against whom the claim is made. *Albretch v. State*, 444 So.2d 8, 11 (1984). The action before the Circuit Court consisted of a direct appeal from the Board of County Commissioners, where Plaintiffs challenged the propriety of an administrative action. Since that cause of action is different from Plaintiffs' equal protection and inverse condemnation claims, res judicata does not apply.

Finally, the doctrine of collateral estoppel does not apply. Collateral estoppel applies when identical parties wish to relitigate issues that were actually litigated as necessary and material issues in a prior action. *Carson v. Gibson*, 638 So.2d 79, 81 (Fla. 2d DCA 1994). Since none of the issues which must be determined in the equal protection or inverse condemnation claims were actually litigated in the Circuit Court, these claims are not precluded.

b. Preclusive Effects of Prior Litigation on the State Inverse Condemnation Claim

The County contends Plaintiffs' inverse condemnation claim under state law was already litigated before the Circuit Court.[7] This Court disagrees. Under Florida law, Plaintiffs are not barred from bringing an inverse condemnation action after unsuccessfully challenging the propriety of an administrative agency action, judicially or otherwise. *Corn v. City of Lauderdale Lakes*, 904 F.2d 585, 587-88 (11th Cir. 1990); *Albretch*, 444 So.2d at 12-13, *superseded by statute on other grounds as stated in, Bowen v. Florida Dep't of Envtl. Regulation*, 448 So.2d 566 (Fla. 2d DCA 1984).

## III. Ripeness Considerations

Counts I and II assert causes of action for inverse condemnation under federal and state law, respectively. With respect to the federal claim, Plaintiffs allege that the County deprived them of their property interests without just compensation, pursuant to Section 1983 and the Fifth Amendment to the United States Constitution. The United States Supreme Court has held, however, that a

---

[7] The Court is aware that Plaintiffs raised the takings claims in their Petition for Writ of Certiorari to the Third District Court of Appeal. The County improperly relies on the Petition and on the District Court's denial without opinion of the petition to argue that these issues were previously litigated. A denial without opinion of a petition for certiorari does not constitute an adjudication on the merits. *Don Most Agency, Inc. v. Harrison*, 362 So.2d 56 (Fla. 2d DCA 1978); *Bing v. A.G. Edwards & Sons, Inc.*, 498 So.2d 1279, 1280 (Fla. 3d DCA 1986).

takings claim under the Fifth Amendment does not become ripe until a plaintiff uses available state law procedures to obtain just compensation. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-197 (1985); *see also New Port Largo, Inc. v. Monroe County*, 95 F.3d 1084, 1089 (11th Cir. 1996). The rationale behind this holding is that the Fifth Amendment does not proscribe the taking of property; rather, it proscribes the taking of property without just compensation. *Hamilton Bank*, 473 U.S. at 194 (emphasis added).

Since Plaintiffs have not pursued their state inverse condemnation claim in the Florida courts, the Court will dismiss the federal claim (Count I) without prejudice.

## IV. Dismissal under Rule 12(b)(6)

The County has moved to dismiss Plaintiff's equal protection claim (Count III) for failure to state a claim under Fed. R. Civ. P. 12(b)(6). When considering the County's motion, the Court must construe the Complaint in the light most favorable to the Plaintiffs and take its allegations of material fact as true. *Cannon v. Macon County*, 1 F.3d 1558, 1565 (11th Cir. 1993). The Court's inquiry is directed to whether the allegations in the Complaint constitute a statement of a claim under Fed. R. Civ. P. 8(a). *Investors Syndicate of Am., Inc. v. City of Indian Rocks Beach*, 434 F.2d 871, 879 (5th Cir. 1970).[8] To state a claim, Rule 8(a) requires "a short and plain statement of

---

[8] Decisions of the Fifth Circuit issued before October 1, 1981 are binding authority in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

the claim showing that the pleader is entitled to relief." The Court should not dismiss a complaint for failure to state a claim " 'unless it appears beyond doubt that the plaintiff can prove no set of facts' " which would entitle it to relief. *Cannon*, 1 F.3d at 1565 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

Plaintiffs' claim that the County deprived them of their equal protection rights in violation of the Fourteenth Amendment fails under Rule 12(b)(6). The Equal Protection Clause requires that all similarly situated persons be treated alike. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-40 (1985); *Baggs v. City of South Pasadena*, 947 F.Supp. 1580, 1584-85 (M.D. Fla. 1996); *Moore v. City of Edgewood*, 790 F.Supp. 1561 (M.D. Fla. 1992), *aff'd*, 985 F.2d 578 (11th Cir. 1993). If dissimilarly situated people are treated differently, then there is no equal protection violation. *E & T Realty v. Strickland*, 830 F.2d 1107, 1111 (11th Cir. 1987). Plaintiffs contend the County treated County-owned facilities more favorably than it treated Plaintiffs' facility. Complaint at ¶¶ 98-104; ¶¶ 114-120. However, the factual allegations in the Complaint and the attachments reveal that Plaintiffs' facility was unique in terms of its location, mode of operation, and the terms under which it was permitted to operate. *See e.g.*, Complaint at ¶ 7 (goal was to build a demonstration facility as a model), 21-23 (proposal submitted for an "alternative" resource recovery facility), 32 (unusual use zoning required), and 35 (unusual use granted subject to conditions). Based on these allegations, it appears Plaintiffs' facility and the County's facilities are not similarly situated. Accordingly, this Court concludes that Plaintiffs

have failed to state an equal protection claim under Rule 12(b)(6).

## V. State Law Claims

Since the Court has dismissed the federal claims, it must now decide whether to exercise jurisdiction over the remaining state law claims – Counts II and VI-VIII. A federal court may decline to exercise jurisdiction where principles of judicial economy, convenience, fairness, and comity favor proceeding in state court. *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 (1988). In particular, where the federal claims are dismissed before trial, the federal district court should dismiss the state claims, as well. *Id.* at 350 n.7.

Plaintiffs argue the Court may exercise jurisdiction based on 28 U.S.C. § 1334(b) because this case relates to their bankruptcy proceeding. However, 28 U.S.C. § 1334(c)(1) permits the district court to abstain from hearing a particular proceeding "in the interest of justice or in the interest of comity with state courts or respect for state law." Given that the controlling law in this action is Florida state law, the factors in Section 1334(c)(1) weigh in favor of abstention. Accordingly, the Court declines to exercise jurisdiction over the state claims.

## VI. Conclusion

Accordingly, for the reasons stated in this order, it is

ORDERED AND ADJUDGED as follows:

(1) Count I is DISMISSED WITHOUT PREJUDICE as unripe;

(2) Count III is DISMISSED for failure to state a claim;

(3) Count IV is DISMISSED under the *Rooker-Feldman* doctrine;

(4) Counts II, VI, VII and VIII are DISMISSED, as the Court declines to exercise jurisdiction over them;

(5) This case is CLOSED. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 5th day of ~~August~~ Sept., 1997.

/s/ Edward B. Davis
EDWARD B. DAVIS
CHIEF UNITED STATES
DISTRICT JUDGE

cc:
Robert A. Ginsburg, Esq.
Robert Krawcheck, Esq.
Leslie Lupert, Esq.
Joseph Beasley, Esq.
Chesterfield Smith, Esq.

# APPENDIX C

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

---

No. 97-5654

---

AGRIPOST, INC., a Florida Corporation,
AGRI-DADE, LTD., a Florida Limited
Partnership,

Plaintiffs-Appellees,

versus

MIAMI-DADE COUNTY, through its
Manager and Board of County
Commissioners,

Defendant-Appellant.

---

On Appeal from the United States District Court
for the Southern District of Florida

---

(Filed Febr. 18, 2000)

BEFORE: TJOFLAT and EDMONDSON, Circuit Judges, and KRAVITCH, Senior Circuit Judge.

PER CURIAM:

The petition(s) for rehearing filed by appellant, Miami-Dade County, is DENIED.

ENTERED FOR THE COURT:

/s/ Tjoflat
UNITED STATES CIRCUIT JUDGE

---

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE ELEVENTH CIRCUIT**

---

No. 97-5654

---

AGRIPOST, INC., a Florida Corporation,
AGRI-DADE, LTD., a Florida Limited
Partnership,

Plaintiffs-Appellees,

versus

MIAMI-DADE COUNTY, through its
Manager and Board of County
Commissioners,

Defendant-Appellant.

---

On Appeal from the United States District Court
for the Southern District of Florida

---

(Filed Febr. 18, 2000)

**ON PETITION(S) FOR REHEARING AND**
**PETITION(S) FOR REHEARING EN BANC**

(Opinion _____, 11th Cir., 19__, ___F.2d___).

BEFORE: TJOFLAT and EDMONDSON, Circuit Judges, and KRAVITCH, Senior Circuit Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate

Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Tjoflat
UNITED STATES CIRCUIT JUDGE

# APPENDIX D

## CONSTITUTION OF THE UNITED STATES

### ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

---

### ARTICLE [V.]

No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

---

### ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they

reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**28 U.S.C. § 1331. Federal question**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85-554, § 1, 72 Stat. 415; Oct. 21, 1976, Pub.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, Pub.L. 96-486, § 2(a), 94 Stat. 2369.)

---

**28 U.S.C. § 1334. Bankruptcy cases and proceedings**

**(b)** Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

---

**28 U.S.C. § 1367. Supplemental jurisdiction**

**(a)** Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under

Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

* * *

**(d)** The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

---

**28 U.S.C. § 1738. State and Territorial statutes and judicial proceedings; full faith and credit**

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith

and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. (June 25, 1948, c. 646, 62 Stat. 947.)

---

**42 U.S.C. § 1983. Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

---

## CONSTITUTION OF THE STATE OF FLORIDA

**SECTION 6. Schedule to Article VIII. –**

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

* * *

(e) CONSOLIDATION AND HOME RULE. Article VIII, Sections 9, 10, [3]11 and 24, of the Constitution of

---

[3] Note.–Section 11 of Art. VIII of the Constitution of 1885, as amended, reads as follows:

SECTION 11. Dade County, home rule charter. – (1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter:

(a) Shall fix the boundaries of each county commission district, provide a method for changing them from time to time, and fix the number, terms and compensation of the commissioners, and their method of election.

(b) May grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; to levy and collect such taxes as may be authorized by general law and no other taxes, and to do everything necessary to carry on a central metropolitan government in Dade County.

(c) May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units

1885, as amended, shall remain in full force and effect as to each county affected, as if this article had not been

---

whose jurisdiction lies wholly within Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise, except the Dade County Board of County Commissioners as it may be provided for from time to time by this home rule charter and the Board of Public Instruction of Dade County.

(d) May provide a method by which any and all of the functions or powers of any municipal corporation or other governmental unit in Dade County may be transferred to the Board of County Commissioners of Dade County.

(e) May provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Dade County from time to time and provide for their government and prescribe their jurisdiction and powers.

(f) May abolish and may provide a method for abolishing from time to time all offices provided for by Article VIII, Section 6, of the Constitution or by the Legislature, except the Superintendent of Public Instruction and may provide for the consolidation and transfer of the functions of such offices, provided, however, that there shall be no power to abolish or impair the jurisdiction of the Circuit Court or to abolish any other court provided for by this Constitution or by general law, or the judges or clerks thereof although such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses, although the charter may confer appellate jurisdiction on such courts, and provided further that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of said office or offices as are now or may hereafter be prescribed by general law.

adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article. All provisions

---

(g) Shall provide a method by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter. Upon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County.

(h) May change the name of Dade County.

(i) Shall provide a method for the recall of any commissioner and a method for initiative and referendum, including the initiation of and referendum on ordinances and the amendment or revision of the home rule charter, provided, however, that the power of the Governor and Senate relating to the suspension and removal of officers provided for in this Constitution shall not be impaired, but shall extend to all officers provided for in said home rule charter.

(2) Provision shall be made for the protection of the creditors of any governmental unit which is merged, consolidated, or abolished or whose boundaries are changed or functions or powers transferred.

(3) This home rule charter shall be prepared by a Metropolitan Charter Board created by the Legislature and shall be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Until a home rule charter is adopted the Legislature may from time to time create additional Charter Boards to prepare charters to be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Such Charter, once adopted by the electors, may be amended only by the electors of Dade County and this charter shall provide a method for submitting future charter revisions and amendments to the electors of Dade County.

(4) The County Commission shall continue to receive its pro rata share of all revenues payable by the state from whatever source to the several counties and the state of Florida shall pay to the Commission all revenues which would have

of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted by the electors of Dade

---

been paid to any municipality in Dade County which may be abolished by or in the method provided by this home rule charter; provided, however, the Commission shall reimburse the comptroller of Florida for the expense incurred if any, in the keeping of separate records to determine the amounts of money which would have been payable to any such municipality.

(5) Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties in the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County.

(6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to

County pursuant to [3]Article VIII, Section 11, of the Constitution of 1885, as amended, shall be valid, and any amendments to such charter shall be valid; provided that

---

said charter and in conflict therewith, and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith.

(7) Nothing in this section shall be construed to limit or restrict the power and jurisdiction of the Railroad and Public Utilities Commission or of any other state agency, bureau or commission now or hereafter provided for in this Constitution or by general law and said state agencies, bureaus and commissions shall have the same powers in Dade County as shall be conferred upon them in regard to other counties.

(8) If any section, subsection, sentence, clause or provisions of this section is held invalid as violative of the provisions of Section 1 Article XVII of this Constitution the remainder of this section shall not be affected by such invalidity.

(9) It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.

**History.** – Added, H.J.R. 858, 1941; adopted 1942; Am. S.J.R. 1046, 1955; adopted 1956.

the said provisions of such charter and the said amendments thereto are authorized under said [3]Article VIII, Section 11, of the Constitution of 1885, as amended.

(f) DADE COUNTY; POWERS CONFERRED UPON MUNICIPALITIES. To the extent not inconsistent with the powers of existing municipalities or general law, the Metropolitan Government of Dade County may exercise all the powers conferred now or hereafter by general law upon municipalities.

## MIAMI – DADE COUNTY HOME RULE AMENDMENT AND CHARTER

### SECTION 1.02. RESOLUTIONS AND ORDINANCES.

A. The Board shall adopt its own rules of procedure and shall decide which actions of the Board shall be by ordinance or resolution, except as otherwise provided in this Charter and except that any action of the Board which provides for raising revenue, appropriating funds, or incurring indebtedness (other than refunding indebtedness), or which provides a penalty or establishes a rule or regulation for the violation of which a penalty is imposed shall be by ordinance.

---

STATE OF FLORIDA )
) ss:
DADE COUNTY )

I, HARVEY RUVIN, Clerk of the Circuit Court in and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above foregoing is a true and correct

COPY OF SECTION 1.02 A. OF THE CODE OF METROPOLITAN DADE COUNTY "THE HOME RULE AMENDMENT AND CHARTER" as appears of record.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this **03RD** day of **DECEMBER**, A.D. **1999.**

HARVEY RUVIN, Clerk
Board of County Commissioners
Dade County, Florida

By /s/ K. Guldstrand
Deputy Clerk

[SEAL]

Board of County Commissioners
Dade County, Florida

---

**CODE OF MIAMI-DADE COUNTY, FLORIDA**

**Sec. 33-314. Finality of district boundary changes and regulation amendments.**

(a) In addition to the powers set forth in sections 33-313 and 33-315, the board of county commissioners shall have the authority and duty to directly hear and act upon applications for the following matters:

(1) District boundary changes. The board shall hear and grant or deny applications for district boundary changes on individual pieces of property or on a neighborhood or area-wide basis.

(2) The board of county commissioners shall review those plans submitted as part of an application for a planned development. The board shall decide if the proposed development is in accordance with the provisions for a planned development and

said board shall diligently consider the recommendations of the building and zoning department, and planning department or the developmental impact committee prior to recommending approval, approval with modification, or denial. Said board shall only approve an application for a planned development when plans and other exhibits are in compliance with the criteria for a planned development and otherwise meet the criteria contained in section 33-311.

(3) Where an application for district boundary change also contains a request for unusual use, new use, variance or special exception which is incidental or related thereto, or where there is pending on the same property or portion thereof more than one application for district boundary change, variance, special exception, unusual or new use, the said application or applications shall be heard in their entirety solely by the board of county commissioners and when possible acted upon at the same public hearing.

(4) All zoning applications by state and municipal entities and agencies.

(5) Applications for unusual uses or amendments or modifications thereto described in section 33-13(e) when said unusual uses, amendments or modifications require approval before the board of county commissioners in connection with a class I or class IV permit application, as defined in section 24-58.1.

(6) Applications for development approval of developments of regional impact or modification thereof. Where an application for development approval of a development of regional impact also contains a request for any action under this chapter requiring a public hearing or where there is pending on any property an application for development approval for a development of regional impact and an application for any other action under this chapter requiring a public hearing, all such applications shall be heard in their entirety by the board of county commissioners and where practicable acted upon at the same public hearing.

(7) Use variances as provided for in section 33-311(e)(1).

(8) Self-service storage facilities as provided for in section 33-247(38).

(9) Upon application for, hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the development impact committee executive council or its chairman in the discharge of its duties as defined in sections 2-114.1, 2-114.2, 2-114.3, 2-114.4 and Chapters 33E, 33H, 33I and 33J of the Code. The board of county commissioners shall also hear and decide appeals or other matters as provided by sections 2-114.2, 2-114.3, and 2-114.4 of the Code.

(10) Applications for developmental resolutions for which the applicant or the executive council of the DIC has invoked the

administrative remedy set forth in section 2-114.1, Code of Metropolitan Dade County, Florida.

(b) The board, after hearing why the application should or should not be granted, shall consider the matter in accordance with the criteria specified in this chapter, and shall by resolution either grant or deny the application. In granting any variances, special exceptions, new uses or unusual uses, the board of county commissioners may prescribe any reasonable conditions, restrictions and limitations it deems necessary or desirable in order to maintain the plan of the area and compatibility therewith. Such action of the board of county commissioners shall be final; provided, no such action shall be taken until notice of time and place of the meeting at which the board of county commissioners will consider and take final action on the application has been first published as provided in section 33-310 hereof. Anything in this article to the contrary notwithstanding, when an application for a district boundary change or special exception, new use, unusual use or variance is filed by the director or planning director it will only be decided by the county commission after receiving the recommendations of the two (2) directors and after the required noticed public hearing, and such decision shall then be final. Notwithstanding anything in this article or the Code of Metropolitan Dade County to the contrary, the board of count commissioners may reconsider its action upon a zoning application only in accordance with section 33-319(k) of this Code or only at the same meeting at which the action was taken and solely for the purpose of

avoiding a manifest injustice. Except as otherwise specified hereby, if a motion to reconsider is adopted, no further affirmative action shall be taken until notice of such reconsideration and the time and place of final action is provided in accordance with section 33-310 hereof; provided, however, that such affirmative action may be taken before the next item on the zoning agenda is called for consideration or before a recess or adjournment is called, whichever occurs first.

(c) In granting any application for district boundary change to an BU or IU District the board shall condition the same to be subject to the director's approval of a plot use plan, and such plan shall include among other things but shall not be limited to the location of buildings and structures, types, sizes and location of signs, light standards, parking areas, exits and entrances, drainage, walls, fences, landscaping and sprinkler systems; provided that such approval be by the zoning appeals board, following public hearing, where the application involves business uses in excess of ten (10) acres or one hundred thousand (100,000) square feet of retail floor area or one thousand (1,000) vehicle off-street parking space capacity, or industrial use in excess of fifty (50) acres of five hundred (500) vehicle off-street parking space capacity.

(d) Recommendation of the zoning appeals board for or against regulation amendments when received by the board of county commissioners shall be considered and if it is determined to amend the regulations in any manner, such amendment shall be enacted by ordinance as provided by law. (Ord. No. 60-14, 4-19-60; Ord. No. 61-30, § 1, 6-27-61; Ord. No. 62-48, § 1E, 12-4-62; Ord. No. 73-46, § 1, 5-1-73; Ord. No. 74-20, § 7, 4-3-74; Ord. No.

74-40, § 5, 6-4-74; Ord. No. 74-69, § 1, 9-3-74; Ord. No. 75-47, § 6, 6-18-75; Ord. No. 75-100, § 2, 11-4-75; Ord. No. 77-55, § 1, 7-19-77; Ord. No. 83-70, § 16, 9-6-83; Ord. No. 84-70, § 1, 9-4-84; Ord. No. 87-6, § 1, 2-17-87; Ord. No. 88-112, § 2, 12-6-88; Ord. No. 89-10, § 6, 2-21-89; Ord. No. 90-26, § 3, 3-20-90; Ord. No. 90-31, § 3, 4-3-90; Ord. No. 90-36, § 1, 4-17-90; Ord. No. 90-59, § 3, 6-19-90; Ord. No. 90-76, § 4, 7-24-90)

---

STATE OF FLORIDA )
) SS:
COUNTY OF DADE )

I, MARSHALL ADER. Clerk of the Circuit Court in and for Dade County, Florida, and ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct COPY OF SECTION 33-314 OF THE CODE, as appears of record.

IN WITNESS WHEREOF. I have hereunto set my hand and official seal on this 20 day of AUGUST, A.D., 1992.

MARSHALL ADER, Clerk
Board of County Commissioners
Dade County, Florida

By /s/ K. Guldstrand
Deputy Clerk

[SEAL]

---

# APPENDIX E

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARSING [sic] MOTION AND, IF FILED, DISPOSED OF.

AGRI-DADE, LTD.,

Appellant,

VS.

METROPOLITAN DADE COUNTY, by and through BOARD OF COUNTY COMMISSIONERS,

Appellee.

_____/

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO. 91-214-AP

(Filed June 5, 1992)

Opinion filed JUNE 05, 1992.

Appeal from the Board of County Commissioners, Dade County, Florida.

Parker D. Thomson, Carol A. Licko, and Thomson Muraro & Razook, P.A., and Susan H. Aprill and Bohrer & Aprill, P.A., Attorneys

for Appellant, Agri-Dade, Ltd.

Robert A. Ginsburg, Dade County Attorney, and Robert L. Krawkcheck, Asst. County Attorney, Attorneys

for Appellee, Metropolitan Dade County.

Sanford A. Freedman, Attorney for Intervenors, Fredericka Wilson, et al.

Before ROBINSON, RAMIREZ and SHAPIRO, JJ.

ROBINSON, J

A conditional unusual use permit was issued Agri-Dade, Ltd. in 1987 (Resolution 2-63-87) to construct and operate a plant to compost the County's solid waste. On May 23, 1991, the Board of County Commissioners sustained a decision of the Dade County Zoning Appeals Board revoking that resolution because of violations of these conditions in that resolution.

This case challenges the legal validity of that decision by the Dade County Commission, deciding between the comfort, perhaps health, of 800 school children and the need to environmentally recycle difficult to dispose of garbage into healthful crop fertilizer. As a result, this Court is asked to affirm a decision which could create up to an asserted $30,000,000 loss for Agri-Dade.

The County's decision must be affirmed because when restating the above situation in legal terms, Agri-Dade is found by the substantial competent evidence test not to have complied with the conditions of the resolution, therefore justifying the County's revocation. *Small-eylogics Corporation v. Dade County*, 176 So.2d 574 (Fla. 3d DCA 1965). In particular, where there was a requirement not to create obnoxious odors, and where those odors continued for an unreasonable length of time, and when the President of Agri-Dade, who presented a plan to remove the odor, said it would take months and a substantial monetary expenditure to retrofit the plant, the Commission was justified in relying on the testimony of the complaining neighbors and on the expert opinion within the record which verified the non-compliance with conditions.

As a last issue meriting comment, Agri-Dade asserts that the County Commission was estopped to revoke its conditional unusual use permit. However, Agri-Dade was always on notice that its permit was conditional on meeting certain requirements. Revocation for failing to meet conditions does not invoke estoppel. *See Jefferson National Bank at Sunny Isles v. Metropolitan Dade County*, 271 So.2d 207 (Fla. 3d DCA 1972).

Affirmed.

Ramirez and Shapiro, JJ. concur.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1992
SEPTEMBER 21, 1992

| | | |
|---|---|---|
| AGRI-DADE, LTD., | ** | CASE NO. 92-01525 |
| Petitioner(s), | ** | |
| vs. | ** | LOWER |
| METROPOLITAN DADE CO., etc., | ** | TRIBUNAL NO. 91-214AP |
| Respondent(s). | ** | |

Following review of this petition for writ of certiorari, together with the response, it is ordered that said petition is hereby denied. Schwartz, C.J., Ferguson and Cope, JJ., concur.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By: /s/ Illegible
Deputy Clerk

cc: Parker D. Thomson
Robert Lowell Krawcheck
Hon. Steven D. Robinson
/DM
Robert A. Ginsburg
Sanford Freedman

Supreme Court, U.S.
FILED
JUN 16 2000
CLERK

(2)

No. 99-1856

IN THE

# Supreme Court of the United States

MIAMI-DADE COUNTY, through its Manager and Board of County Commissioners,

*Petitioner,*

*v.*

AGRIPOST, INC., and AGRI-DADE, LTD.,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

## BRIEF IN OPPOSITION

JOSEPH W. BEASLEY
JOSEPHS, JACK & GAEBE
Grove Professional Building
Suite 100
2950 S.W. 27th Avenue
Miami, FL 33133-3765
(305) 445-3800

SHELDON H. ELSEN
*Counsel of Record*
LESLIE A. LUPERT
PETER ADELMAN
ORANS, ELSEN & LUPERT LLP
One Rockefeller Plaza
New York, NY 10020
(212) 586-2211

*Attorneys for Respondents*

160366

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

20PP

## QUESTIONS PRESENTED

1. Should this Court review the question of whether the Rooker-Feldman doctrine bars a Federal action for an uncompensated taking when an Eleventh Circuit panel unanimously found (a) that the takings claim had not been adjudicated and could not have been adjudicated in a prior State court action, (b) that Rooker-Feldman was therefore not triggered, and (c) that the Federal takings claim was properly dismissed without prejudice as unripe?

2. Should this Court review Florida law questions of claim preclusion and issue preclusion which were decided unanimously against petitioner by the Eleventh Circuit and the District Court?

3. Should this Court grant certiorari to review petitioner's claim and issue preclusion and Rooker-Feldman claims when no judge of the Eleventh Circuit either accepted them or considered them sufficiently meritorious to justify polling when petitioner sought rehearing en banc?

## STATEMENTS PURSUANT TO RULE 29.6

Respondent, Agri-Dade, Ltd., is a Florida limited partnership.

Respondent, Agripost Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Questions Presented | i |
| Statements Pursuant to Rule 29.6 | ii |
| Table of Contents | iii |
| Table of Cited Authorities | iv |
| Statement of the Case | 1 |
| A. Factual Background | 1 |
| B. The Florida State Court Proceeding To Review Dade's Administrative Closing | 2 |
| C. Consequences of the Plant Closing | 5 |
| D. Federal Proceedings Below | 5 |
| Reasons for Denying the Writ | 8 |
| I. There Is Nothing In This Case To Merit Supreme Court Review | 8 |
| II. Dade's Effort To Create Illusory Conflicts | 9 |
| III. Petitioner's Discussion Of The Rooker-Feldman Doctrine Is Irrelevant | 11 |
| IV. Both The Eleventh Circuit And The District Court Had Subject Matter Jurisdiction For The Rulings At Issue Here | 12 |
| Conclusion | 14 |

## TABLE OF CITED AUTHORITIES

*Page*

**Cases:**

*Albrecht v. State*, 444 So.2d 8 (Fla. 1984) ..... 3, 4

*Disher v. Information Resources, Inc.*, 873 F.2d 136 (7th Cir. 1989) ..... 13

*First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987) ... 9, 10

*Grayson v. K-Mart Corp.*, 79 F.3d 1086 (11th Cir. 1996) ..... 13

*Lake Lucerne Civic Ass'n Inc., v. Dolphin Stadium Corp.*, 878 F.2d 1360 (11th Cir. 1989) ..... 3

*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) ..... 10

*Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987) ... 11

*Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998) ..... 13

*Treister v. City of Miami*, 893 F. Supp. 1057 (S.D. Fla. 1992), *aff'd*, Case No. 95-5173 (May 15, 1995) (unpublished) ..... 12

*Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) ..... 6, 10

*Wood v. Orange County*, 715 F.2d 1543 (11th Cir. 1983) ..... 11

*Cited Authorities*


| | *Page* |
|---|---|
| **Statutes:** | |
| 28 U.S.C. § 1334(b) | 5 |
| 28 U.S.C. § 1367 | 5 |
| **Rule:** | |
| Supreme Court Rule 15.2 | 1 |
| **Other Authorities:** | |
| Restatement (2d) of Judgments, § 27 (1982) | 10 |
| Restatement (2d) Judgments, § 87 (1982) | 13 |

## STATEMENT OF THE CASE

The arguments urged on this Court by the petition for certiorari are the same as those urged below. They have been rejected by every judge who has considered them: Chief Judge Davis of the Southern District of Florida, a unanimous panel of the Eleventh Circuit on the appeal, the same unanimous panel of the Eleventh Circuit on petition for rehearing, and every judge of the Eleventh Circuit on petition for rehearing en banc. Indeed, no judge of the Eleventh Circuit deemed the issues worthy of polling to decide whether to rehear them en banc. App. 37.[1] There is no important issue in this case that merits certiorari review by this Court.

### A. Factual Background

The action below arose on a motion to dismiss by petitioner-defendant Miami-Dade County ("Dade"), so that the allegations of the complaint must be taken to be true. The complaint alleged that in 1986 Dade sought out a company to build a waste disposal plant and chose respondent-plaintiff Agripost, Inc. ("Agripost") to construct one based on an innovative process. The risk of odors was foreseen: a contract between Dade and Agripost provided that if Dade's Department of Environmental Resources Management ("DERM") determined that odors were coming from Agripost's plant, DERM was required to give Agripost written notice and a reasonable opportunity to cure, and Agripost then had to cure them. Dade's petition for certiorari (the "petition") omitted reference to this contract provision, an omission we point out pursuant to our duty under Supreme Court Rule 15.2.

---

1. References to the petition will be designated by the prefix "Pet." and to the appendix of the petition by the prefix "App."

Dade's petition further omits to disclose that DERM gave notice of the odors, that Agripost developed a plan to cure, involving the retrofitting of equipment, and that DERM approved the plan to cure and a timetable for action. Political pressure grew because of the odors, and Dade officials jettisoned Agripost's contract right to have a reasonable opportunity to cure before Agripost could implement the cure in accordance with the plan and timetable approved by DERM. Dade moved administratively to close the plant down and did so without paying compensation. The complaint in the case below alleged breach of contract as well as uncompensated takings claims under Federal and Florida law.

## B. The Florida State Court Proceeding To Review Dade's Administrative Closing

The administrative proceeding and its judicial review by a Florida three-judge court are described in the Eleventh Circuit's opinion, printed in the Appendix of the petition at App. 1-18. The three-judge Florida court, whose opinion is at App. 57-59, upheld the County's exercise of its police power under the applicable Florida standard for judicial review of administrative decisions, substantial competent evidence, and the plant was closed. App. 4-5.

The Eleventh Circuit found, on review of the record for that three-judge State court proceeding, that no claim for an uncompensated taking had been raised before the three-judge court and, as a matter of Florida law, none could have been raised. (App. 13-15). To quote the Eleventh Circuit panel:

> We conclude that *the [Florida] Circuit Court did not acknowledge, and therefore did not litigate, Agripost's takings claim for two reasons*. First,

> *the record is devoid of any indication that Agripost presented such a claim to the Circuit Court* after the court affirmed the Board's revocation of Agripost's permit. Specifically, *we find no allegation by Agripost to the effect that its property had been rendered worthless and that Florida provided no adequate process for obtaining just compensation. Nor is there any indication that the Circuit Court noticed a takings claim on its own initiative* and, having done so, rejected it as legally insufficient.
>
> Second, *the Circuit Court lacked the authority to determine the takings issue.* The Circuit Court's task was limited to one question: whether the Board's revocation of Agripost's permit was justified. *The court was not called upon to determine whether there had been a Fifth Amendment taking. A Fifth Amendment takings claim could not have materialized until the [Florida] Circuit Court passed on the propriety of the Board's revocation of Agripost's permit. See Lake Lucerne Civic Ass'n Inc., v. Dolphin Stadium Corp.*, 878 F.2d 1360, 1370 (11th Cir. 1989) *("The point is that the propriety of the agency action must be finally determined before a claim for inverse condemnation exists") (quoting Albrecht v. State, 444 So.2d 8, 12 (Fla. 1984)).*

App. 13-14 (emphasis added).

In the cases cited, *Lake Lucerne* held, following the Florida Supreme Court in *Albrecht v. State*, that the takings

claim may only be brought *after* the conclusion of the administrative proceeding and its judicial review. The Florida Supreme Court said in *Albrecht*:

> "the petitioners' claim of uncompensated taking constitutes a separate and distinct cause of action from that litigated previously. In the first action the petitioners were challenging the propriety of the agency's actions. The determination, judicially or otherwise, that the action was proper under the applicable statute does not necessarily also determine that there is no taking, nor does it necessarily bar the valid exercise of police power. . . . In addition, the facts necessary to maintain the taking action are different. There must be a diminution in value of the property as well as a lack of alternative uses. Under a constitutionally valid statute providing for protection of the public welfare, those facts are irrelevant to the determination of propriety of the agency action."

444 So.2d at 12 (citation omitted).

The three-judge Florida court was also not a trial court and thus not an appropriate forum for a trial of either the takings claim or the breach of contract claim.

Dade flatly misstates both the Eleventh Circuit holding and the record of the State court proceeding when, at Pet. 4, it says that "the Florida court . . . reject[ed] Agripost's taking claims. . . ." Dade repeats this misstatement of the record in Argument heading I B, Pet. 10, saying that "the State court had held that no taking occurred." The petition thus relies heavily on a misstatement of the record below. Indeed, without this misstatement of the record Dade has no Rooker-Feldman point to urge on this Court.

Dade, furthermore, does not address either of the cases cited by the Eleventh Circuit to show that the takings claim could not have been raised before the three-judge court reviewing Dade's administrative decision. Dade does not even cite these cases in its petition for certiorari. Nor does it challenge the Eleventh Circuit's opinion on the point. What Dade does is simply to ignore what the Eleventh Circuit held and, we regret to say, to misrepresent the record.

### C. Consequences of the Plant Closing

When the plant was closed, Agripost lost its entire investment, some $30 million. The banks which had loaned it money to build the plant saw their loans turn uncollectible. In addition, Agripost was a public company, with 20 million shares outstanding; based on stock prices its equity was worth as much as $100 million. Loss of the plant forced Agripost into bankruptcy; there were no funds to pay creditors, and the stockholders' entire equity was wiped out. A plan of reorganization under Chapter 11 preserved the right of the company to bring this action for the benefit of creditors and stockholders.

### D. Federal Proceedings Below

Agripost sued Dade in the Federal District Court for the Southern District of Florida, asserting, *inter alia*, Federal and State inverse condemnation claims and breach of contract. The State claims were brought under 28 U.S.C. § 1367 (supplemental jurisdiction) and 28 U.S.C. § 1334(b), under the Court's "related-to" jurisdiction over the case because of the Chapter 11 reorganization plan.

Dade moved to dismiss with prejudice and for summary judgment with prejudice on preclusion grounds: claim preclusion (res judicata), issue preclusion (collateral estoppel), and the Rooker-Feldman doctrine.

Chief Judge Edward Davis, finding no merit to any of Dade's preclusion motions, denied all of them, including the Rooker-Feldman point, and denied Dade's application for dismissal with prejudice. He ruled *sua sponte*, however, that the Federal takings claim could not be pursued in Federal court until the State takings claim had been adjudicated in Florida State court, following *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) and a similar Eleventh Circuit case. He then exercised his discretion not to accept supplemental or related-to jurisdiction and dismissed the entire proceeding without prejudice to renewal in the State court.

Agripost immediately refiled the case in Florida State court. Since the plant had been closed in 1991, by that time over six years had elapsed since the events complained of. Dade appealed Judge Davis's decision to the Eleventh Circuit, though technically it had been the prevailing party, and Dade then relied on its appeal to have the Florida court stay further litigation on the merits until all Federal litigation had ended. As a result, even though Dade thereafter lost its appeal and two petitions for rehearing, it managed to prevent plaintiff from litigating on the merits for another two and a half years. In April of 2000, Dade further managed to have the Florida stay continued pending this petition for certiorari, so that the events of the case will be over nine years old before discovery and litigation on the merits can begin.

A panel of the Eleventh Circuit unanimously denied Dade's appeal, holding that because the Florida three-judge Court did not have Agripost's takings claim before it, neither the Rooker-Feldman doctrine applied nor was there claim preclusion. (App. 14-16). As to issue preclusion, or collateral estoppel, the Eleventh Circuit held, also on Florida law grounds, that the issue Dade sought to preclude had not been litigated or decided in the prior State court proceeding and that there was thus no issue preclusion.

Dade petitioned for rehearing, which was unanimously denied. It petitioned for rehearing en banc. The Eleventh Circuit held:

> The Petition(s) for Rehearing are DENIED *and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled* on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

App. 37-38 (emphasis added).

Dade nevertheless brought this petition for certiorari, on the basis of which it has persuaded the Florida court to maintain its stay of litigation on the merits.

## REASONS FOR DENYING THE WRIT

### I. THERE IS NOTHING IN THIS CASE TO MERIT SUPREME COURT REVIEW

First, Dade's petition sets forth no issue that would justify Supreme Court review. Preclusion issues arising from a Florida State court proceeding are governed by the law of the rendering court, i.e., by Florida law. See App. 9, n.11. Florida law issues are not of national significance and do not justify Supreme Court review.

Second, Dade's Rooker-Feldman claim is based on a misrepresentation of the record in the prior proceeding. The Eleventh Circuit expressly held that no Florida court had ever adjudicated Agripost's takings claim or could have. Dade sets forth no reason to show that holding was wrong but ignores it, and writes as if the Florida state court had adjudicated the takings claim. Pet. 4. Absent a prior State court adjudication of an issue in the Federal case, Rooker-Feldman does not apply.

The Federal case, moreover, has been dismissed without prejudice, the Federal takings claim having been found unripe, and the breach of contract claim dismissed in the exercise of the District Court's supplemental jurisdiction discretion. Accordingly it would be improvident for this Court to devote its scarce time to resolving an alleged Rooker-Feldman issue when the case is in this posture.

## II. DADE'S EFFORT TO CREATE ILLUSORY CONFLICTS

At pp. 6-7 of the petition, Dade asserts that the Eleventh Circuit decision below has created conflicts with four Supreme Court decisions. If this were true, it would be hard to imagine a reason why no judge of the Eleventh Circuit deemed the case worthy of even a vote on whether to undergo further review. The answer is obvious: there are no such conflicts.

The first case alleged to conflict, *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), held that State courts have the power to strike down zoning actions that are confiscatory. Dade invokes it at Pet. 6 and in point 1A, at 7-9, to try to make out a claim that pursuant to *First English* the Florida Court had adjudicated a takings issue that thereafter was binding by virtue of collateral estoppel, or issue preclusion.

The Eleventh Circuit mentioned *First English* at App. 16-17, but in doing so held that, while certain zoning actions are invalid under Florida law if they are confiscatory, the rule applies only to zoning ordinances, and not to permit denials and revocations constituting a proper exercise of police power. As the Eleventh Circuit pointed out, the Florida State court did not litigate the questions of whether Dade's administrative actions had rendered Agripost's property worthless or had effectively confiscated it. App. 17. Thus there was no collateral estoppel, or issue preclusion.

This is a question of Florida law, not worthy of Supreme Court review. For the reasons set forth in the Eleventh Circuit opinion, App. 16-17, it is also a correct interpretation.

The three-judge Florida court was conducting a review of an administrative decision under a substantial competent evidence test, not litigating or adjudicating any issue of fact under a preponderance of the evidence test. It was not a trial court. *First English* is a red herring in this context; the question for issue preclusion, or collateral estoppel, is what issues were actually litigated and necessarily determined. Restatement (2d) of Judgments, § 27 (1982). Dade's public policy issues argued at Pet. 7-9 are irrelevant. At best, they should be addressed to the Florida legislature and not to this Court.

The second doctrine that Dade claims to conflict is *Rooker-Feldman*, which we discuss in point III below. As previously noted, Dade has no genuine Rooker-Feldman claim.

The third Supreme Court case invoked by petitioner is *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The Eleventh Circuit, however, cited *Lucas* only to set forth the elements of a takings claim, and did not otherwise construe or attempt to apply that case. Dade's attempt to contend that the Florida three-judge administrative review court applied *Lucas* is also unfounded. There is no mention of *Lucas* in the three-judge court's decision. Nor could there have been. *Lucas* was decided on June 29, 1992, over three weeks after the three-judge court decision, which was on June 5, 1992. App. 57.

The fourth Supreme Court case that Dade invokes is *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985). *Williamson* provided the legal basis on which this case was dismissed without prejudice as unripe, but that issue was not before the Eleventh Circuit and is not relevant here.

In sum, petitioner listed Supreme Court cases referred to in the Eleventh Circuit decision but has failed to show that the Eleventh Circuit decision conflicted with any of them.

## III. PETITIONER'S DISCUSSION OF THE ROOKER-FELDMAN DOCTRINE IS IRRELEVANT

The petition's lengthy discussion of the Rooker-Feldman doctrine, Pet. I B, 10-21, is premised on the incorrect assumption that the Federal court below was asked to review and reverse a State court adjudication of the takings claim. *See, e.g.*, argument heading for IB at Pet. 10. Since the Eleventh Circuit held that there never was a State court adjudication of the takings claim, nor could there have been, App., 13-15, a holding unchallenged by petitioner Dade but misrepresented, petitioner's premise is false and its discussion of Rooker-Feldman irrelevant.

Thus the "inextricably intertwined" doctrine of *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) does not apply because there was no State court adjudication with which the later Federal case could have been intertwined. The question of whether the Eleventh Circuit improperly relied on *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983) is irrelevant, since *Wood* was not mentioned in its decision. Nor was a peculiar Eleventh Circuit "exception" to Rooker-Feldman involved, as petitioner claims at Pet. 12. Rooker-Feldman does not apply in any case unless there has been a prior State court adjudication.

Similarly, the footnote at page 13 of the petition is irrelevant. Whatever differences there may be between the Eleventh and other Circuits as to the application of Rooker-

Feldman, no case holds that the doctrine applies to bar a subsequent Federal action on a cause of action not previously adjudicated by a State court.[2]

Finally, at Pet. 16-19, petitioner engages in a discussion of why the Florida State court "had rejected Agripost's taking claims," Pet. 16, in the teeth of the Eleventh Circuit's express holding that the Florida State court had no such takings claim before it, could not have had such a claim before it, and had made no such adjudication. The Florida cases cited by the three-judge Florida opinion went to the question of whether Dade's administrative agencies had substantial competent evidence before them to support administrative revocation of Agripost's permit, not to any takings claim, as the Eleventh Circuit expressly found.

## IV. BOTH THE ELEVENTH CIRCUIT AND THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION FOR THE RULINGS AT ISSUE HERE

In Point II of the petition, Dade claims that the District Court lacked subject matter jurisdiction to decide against it the preclusion motions Dade itself had brought. Dade also complains at Pet. 22 about the Eleventh Circuit's jurisdiction to rule that its preclusion rulings were binding for future litigation because the Eleventh Circuit was the rendering jurisdiction. App. 9, n.11. Both arguments are frivolous.

---

2. Petitioner's quote from *Treister v. City of Miami*, 893 F. Supp. 1057, 1067 (S.D. Fla. 1992), *aff'd*, Case No. 95-5173 (May 15, 1995) (unpublished), Pet. 15, n.10, is also irrelevant. While a Federal takings claim and a State takings claim may be identical for res judicata purposes, Rooker-Feldman does not apply when neither claim has been adjudicated in a prior State court proceeding.

The Eleventh Circuit's statement of which law governs preclusion issues is hornbook law. *See* Restatement (2d) Judgments, § 87 (1982). The Eleventh Circuit was considering the future effect of the District Court's preclusion rulings in order to decide whether Dade, the technically prevailing party below, could show it was aggrieved by the judgment and had standing to appeal, under authorities cited by the Eleventh Circuit at App. 8-10. In App. 9-10, n.11, the Eleventh Circuit concluded that Dade would be bound by the rendering District Court's judgment, therefore was aggrieved, and had standing to appeal. The issue had to be decided before the appeal could be considered on the merits and was therefore well within the Eleventh Circuit's jurisdiction.

The District Court also unquestionably had subject matter jurisdiction to decide the preclusion motions that Dade presented to it. This case was unlike *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), where this Court was dealing with a total absence of Article III jurisdiction. Here the District Court had before it a complaint based on Federal question jurisdiction, supplemental jurisdiction and related-to bankruptcy jurisdiction. It had power to reject Dade's preclusion motions on the merits. Had it ruled for Dade, its dismissal of the takings claim would not have been without prejudice as unripe, but with prejudice as to precluded claims and issues. Neither the decision that the Federal claim was unripe nor the ultimate decision not to exercise discretionary supplemental jurisdiction as to State law claims served to oust the District Court retroactively of all Article III subject matter jurisdiction. *Cf. Disher v. Information Resources, Inc.*, 873 F.2d 136 (7th Cir. 1989). The Circuit Court then had the right to affirm or reverse Judge Davis's preclusion determination on the merits. *Grayson v. K-Mart Corp.*, 79 F.3d 1086, 1095, 10 (11th Cir. 1996). Neither Court lacked subject matter jurisdiction.

## CONCLUSION

The writ should not be granted.

Dated: June 16, 2000

Respectfully submitted,

SHELDON H. ELSEN
*Counsel of Record*
LESLIE A. LUPERT
PETER ADELMAN
ORANS, ELSEN & LUPERT LLP
One Rockefeller Plaza
New York, NY 10020
(212) 586-2211

JOSEPH W. BEASLEY
JOSEPHS, JACK & GAEBE
Grove Professional Building
Suite 100
2950 S.W. 27th Avenue
Miami, FL 33133-3765
(305) 445-3800

*Attorneys for Respondents*

(3)

Supreme Court, U.S.
FILED
JUN 26 2000
CLERK

No. 99-1856

In The

# Supreme Court of the United States

MIAMI-DADE COUNTY, through its Manager and Board of County Commissioners,

*Petitioner,*

vs.

AGRIPOST, INC., a Florida Corporation, and AGRIDADE, LTD., a Florida Limited Partnership,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## REPLY BRIEF

HOLLAND & KNIGHT
701 Brickell Avenue
Suite 3000
Miami, Florida 33101-5441
Telephone: (305) 374-8500
Fax: (305) 789-7799

By: DANIEL S. PEARSON

ROBERT A. GINSBURG
*Counsel of Record*
Miami-Dade County Attorney
Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Telephone: (305) 375-5151
Fax: (305) 375-5634

By: ROBERT LOWELL KRAWCHECK
JAMES J. ALLEN
Assistant County Attorneys

*Counsel for Petitioner, Miami-Dade County*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

15pp

## QUESTIONS PRESENTED

DOES THE ELEVENTH CIRCUIT'S EXCEPTION TO THIS COURT'S RULE AGAINST REVERSING STATE COURT JUDGMENTS PREVENT STATE COURTS FROM DECIDING WHETHER REGULATORY ACTIONS SHOULD BE REVERSED AS CONFISCATORY IN ORDER TO AVOID PERMANENT TAKINGS SUCH AS THE CLAIMED $140,000,000 TAKING IN QUESTION?

IF A FEDERAL COURT LACKS JURISDICTION OVER A FEDERAL REGULATORY TAKING CLAIM BECAUSE IT IS UNRIPE, DOES THE COURT NEVERTHELESS HAVE JURISDICTION TO ADJUDICATE PRECLUSION DEFENSES?

BY HOLDING THAT A STATE TAKING CLAIM WAS NEITHER BEFORE THE COURT NOR GERMANE, DID THE ELEVENTH CIRCUIT DEPRIVE THE COUNTY OF ITS RIGHT TO APPEAL THE DISTRICT COURT'S EXERCISE OF JURISDICTION OVER, AND ITS DISPOSITION OF, THE COUNTY'S DEFENSES TO THAT CLAIM?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iv

STATEMENT OF THE CASE ..... 1

REASONS FOR GRANTING THE PETITION ..... 1

THIS CASE MERITS SUPREME COURT REVIEW BECAUSE THE ELEVENTH CIRCUIT OPINION (a) AUTHORIZES DISTRICT COURT JURISDICTION TO REVERSE STATE COURT ADJUDICATIONS, (b) PREVENTS STATE COURTS FROM DECIDING WHETHER REGULATORY ACTIONS SHOULD BE REVERSED AS CONFISCATORY IN ORDER TO AVOID PERMANENT TAKINGS SUCH AS THE CLAIMED $140 MILLION TAKING IN THE PRESENT CASE, (c) AUTHORIZES THE EXERCISE OF JURISDICTION WHERE SUBJECT MATTER JURISDICTION IS EXPRESSLY FOUND TO BE LACKING, AND (d) DENIES THE RIGHT OF APPEAL. ..... 1

The Eleventh Circuit's decision is in clear conflict with Supreme Court case law ..... 1

1) *First English* – The Eleventh Circuit's peculiar definition of a Fifth Amendment taking claim creates a "Catch 22," undermining *First English*..... 1

2) *Rooker-Feldman* – The Eleventh Circuit's express exceptions to *Rooker-Feldman* eviscerate that doctrine..... 3

(a) The Eleventh Circuit's Exceptions To *Rooker-Feldman* ..... 3

TABLE OF CONTENTS – Continued

Page

(b) The Florida court adjudicated Agripost's taking claim as a matter of both law and fact ..... 4

3) *Lucas* – The Eleventh Circuit opinion negates the "takings" principles of *Lucas*. ..... 8

4) *Williamson County* – The exercise of jurisdiction where it is found to be lacking is the antithesis of *Williamson County*. ..... 8

CONCLUSION ..... 10

## TABLE OF AUTHORITIES

Page

*Albrecht v. State*, 444 So.2d 8 (Fla. 1984) ..... 6

*Dade County v. National Bulk Carriers, Inc.*, 450 So.2d 213 (Fla. 1984) .....5, 6

*Disher v. Information Resources, Inc.*, 873 F.2d 136 (7th Cir. 1989) ..... 9

*District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) ..... 3, 4, 9

*First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987) ..... 1, 2, 9

*Grayson v. K-Mart Corp.*, 79 F.3d 1086 (11th Cir. 1996) ..... 9

*Jefferson National Bank at Sunny Isles v. Metropolitan Dade County*, 271 So.2d 207 (Fla. 3d DCA 1972) ..... 7

*Key Haven Associated Enterprises, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 427 So.2d 153 (Fla. 1982) ..... 6

*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886 (1992) ..... 8

*Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) .. 3, 4, 9

*Smalleylogics Corp. v. Dade County*, 176 So.2d 574 (Fla. 3d DCA 1975) ..... 7

*Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998) ..... 9

*Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) .....8, 9

## STATEMENT OF THE CASE

Agripost's Statement of the Case consists largely of legal arguments pertaining to the state court adjudication of its taking claims, which arguments are discussed *infra*. Otherwise, Agripost extensively discusses (a) its contract claim, Br. at 1, 2, 5, which is immaterial because it is *not* involved in the Petition, and (b) its purported "cure-all," which was expressly rejected by the Florida court based upon Agripost's own admissions. App. 58. Significantly, Agripost does not dispute that it admitted creating a public health nuisance in violation of both of its conditional zoning approval and its conditional lease upon state lands. Pet. at 2-3.

## REASONS FOR GRANTING THE PETITION

**THIS CASE MERITS SUPREME COURT REVIEW BECAUSE THE ELEVENTH CIRCUIT OPINION (a) AUTHORIZES DISTRICT COURT JURISDICTION TO REVERSE STATE COURT ADJUDICATIONS, (b) PREVENTS STATE COURTS FROM DECIDING WHETHER REGULATORY ACTIONS SHOULD BE REVERSED AS CONFISCATORY IN ORDER TO AVOID PERMANENT TAKINGS SUCH AS THE CLAIMED $140 MILLION TAKING IN THE PRESENT CASE, (c) AUTHORIZES THE EXERCISE OF JURISDICTION WHERE SUBJECT MATTER JURISDICTION IS EXPRESSLY FOUND TO BE LACKING, AND (d) DENIES THE RIGHT OF APPEAL.**

**The Eleventh Circuit's decision is in clear conflict with Supreme Court case law.**

1) ***First English* – The Eleventh Circuit's peculiar definition of a Fifth Amendment taking claim creates a "Catch 22," undermining *First English*.**

Agripost erroneously argues that the conflict with *First English Evangelical Lutheran Church v. County of Los*

*Angeles*, 482 U.S. 304 (1987), is simply "a question of Florida law." Br. at 9. However, independent of Florida case law and the facts of this particular case, the Eleventh Circuit has established a "Catch 22" rule prohibiting the raising or adjudication of a taking claim during *any* state court zoning appeal. This deprives both property owners and the states of the right to have confiscatory zoning actions stricken and thereby prevent temporary takings from becoming permanent takings.

In order to hold that the Florida court did not adjudicate Agripost's Fifth Amendment taking claim, the Eleventh Circuit had to define a taking claim in such a peculiar way as to require Agripost or any other litigant to do the impossible. Agripost would have had to allege to the Florida court hearing its zoning appeal that *that very court* had *already* taken its property. The Eleventh Circuit held:

> Agripost had to have filed a pleading (with the *Circuit Court*) alleging the following:
>
> > The *Circuit Court*'s decision affirming the County's revocation of the permit effectively rendered Agripost's property . . . worthless [therefore] Agripost has a ripe Fifth Amendment takings claim.

App. at 13.

Agripost itself confirms that the Eleventh Circuit held that the Florida court *"could not have had* such a [peculiar] claim before it." Br. at 12. *See* Eleventh Circuit Op. at 14-16. At the same time, however, Agripost concedes that *"First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), held that *State*

*courts have the power to strike down zoning actions that are confiscatory.*" Br. at 9. By the foregoing, Agripost itself has highlighted the "Catch 22" created by the Eleventh Circuit opinion and the ensuing conflict with *First English* that warrants Supreme Court review.

**2) *Rooker-Feldman* – The Eleventh Circuit's express exceptions to *Rooker-Feldman* eviscerate that doctrine.**

**(a) The Eleventh Circuit's exceptions to *Rooker-Feldman*.**

Unable to defend the Eleventh Circuit's express exception to *Rooker-Feldman*,[1] Agripost avoids it by misinforming the Court that the "Eleventh Circuit 'exception' to *Rooker-Feldman* [was not] involved." Br. at 11. This statement, of course, flies in the face of the record. *See* the District Court's express application of this "exception" at App. 29-30, and the Eleventh Circuit's recognition and affirmance of this holding based, *inter alia*, upon unripeness at App. 7, 11-14, 18.

Independent of Florida case law and the facts of this case, the Eleventh Circuit has created a new rule of law in conflict with Supreme Court case law. The Eleventh Circuit's exception to *Rooker-Feldman* permits district courts

---

[1] The *Rooker-Feldman* doctrine provides that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). The doctrine extends to claims "inextricably intertwined" with the state court's judgment. *Feldman* at 483 n.16.

to exercise jurisdiction to effectively reverse state court adjudications of dispositive issues whenever a new claim ripens and, even more broadly, whenever a prior state adjudication did not "unambiguously dispose . . . of a federal constitutional *claim*." App. 6. *See* Pet. at 12. This effectively eviscerates *Rooker-Feldman* by allowing district court jurisdiction whenever (a) a new claim ripens, even though the essential elements of that claim have been previously adjudicated by the state court, and (b) whenever the prior adjudication either did not involve, or did not expressly decide, a federal constitutional claim.

**(b) The Florida court adjudicated Agripost's taking claim as a matter of both law and fact.**

As discussed, *supra*, the Eleventh Circuit has created new, sweeping precedents that transcend the particular facts and state law involved in this case. However, the Eleventh Circuit's effective reversal of Florida Supreme Court precedent, and its error as to the adjudication of Agripost's taking claims, in themselves, warrant review. This is so because of both the violation of fundamental principles of federalism, and the enormous financial consequences for the state of Florida, matters which Agripost seeks to minimize. *See* Br. at 8-9.

Try as it might, Agripost simply fails to rebut the County's showing that the taking claims were adjudicated by the Florida court. When stripped of its name-calling, Agripost's discussion of this issue relies on nothing but the very Eleventh Circuit opinion which the Petition demonstrates to be both erroneous and in conflict

with multiple Supreme Court decisions. While Agripost repeatedly accuses the County of misrepresenting that Agripost's taking claims were adjudicated by the Florida court, Br. 4, 5, 8, 11, it presents nothing to substantiate its false accusations and engages in the very kind of conduct which it condemns.

The County's Petition meticulously demonstrated that Agripost asserted to the state court a $30 million taking claim under both the United States and Florida Constitutions. Agripost argued that "[b]oth the Federal and State constitutions provide that the Legislature shall not take property without due process of law and just compensation." Pet. at 3, *citing* AF 3-31. The Petition also thoroughly documented how the $30 million taking claim was not only expressly recognized by the Court, Pet. at 4 *citing* App. 60, but also how the claim or its elements were both directly and necessarily adjudicated *as a matter of law* in no less than *four* separate ways by the Florida circuit pursuant to a Florida Supreme Court requirement to adjudicate taking claims. *See* Pet. at 16-21 and *Dade County v. National Bulk Carriers, Inc.*, 450 So.2d 213 (Fla. 1984).

Unable to refute even one of those four showings, Agripost merely bootstraps its conclusion using the Eleventh Circuit opinion, which, as discussed *supra*, defines a taking claim so peculiarly that no one could have raised it. On the one hand, Agripost even says that the County's analysis of the state court taking claim adjudications was never made. On the other hand, Agripost acknowledges that the argument *was* made and repeats its complaint that the County dares to disagree with the Eleventh Circuit. In its "Statement of the Case," Agripost argues:

> The Eleventh Circuit expressly held that no Florida court had ever adjudicated Agripost's taking claim or could have. *Dade sets forth no reason to show that holding was wrong but ignores it,* and writes as if the Florida state court had adjudicated the takings claim. Pet. 4.

Br. at 8. In its argument, Agripost contradicts itself:

> [P]*etitioner engages in a discussion of why the Florida State court "had rejected Agripost's taking claims,"* Pet. 16, in the teeth of the Eleventh Circuit's express holding that the Florida State court had no such takings claim before it, could not have had such a claim before it, and had made no such adjudication.

Br. at 12.

Agripost further argues in its "Statement of the Case" that the County "does not address either of the cases cited by the Eleventh Circuit to show that the takings claim could not have been raised" before the Florida court. Pet. at 5. This is patently untrue. *See* the Eleventh Circuit's discussion of *National Bulk Carriers,* and *Key Haven Associated Enterprises, Inc. v. Board of Trustees of the Internal Improvement Trust Fund,* 427 So.2d 153 (Fla. 1982), at App. 16-17, and the County's analysis of both these cases demonstrating the *facially apparent* error in the Eleventh Circuit's opinion, at Pet. 19-21. Moreover, Agripost's reliance, in its Statement of the Case, upon *Albrecht v. State,* 444 So.2d 8 (Fla. 1984), highlights the error of its argument. *Albrecht,* like *Key Haven,* was expressly distinguished by the Florida Supreme Court in *National Bulk* as

inapplicable to a Dade County unusual use zoning resolution, the identical kind of zoning action involved in the present case. 450 So.2d 213 at 216.

Agripost further misinforms this Court as follows:

> The *Florida cases* cited by the three-judge Florida opinion went to the question of . . . *substantial competent evidence* . . . *not to any takings claim*, as the Eleventh Circuit expressly found.

Contrary to Agripost's representations and the asserted Eleventh Circuit finding, those cases had nothing to do with the substantial competent evidence rule and everything to do with the Florida court's rejection of Agripost's taking claim.

The case of *Smalleylogics Corp. v. Dade County*, 176 So.2d 574 (Fla. 3d DCA 1975), cited by the Florida court at App. 58 and discussed in the County's Petition at 17, involved a property owner's contention that it had "a substantial *vested property right* in" a Miami-Dade County conditional zoning approval. 176 So.2d 574, 577. The Florida Court held that under Florida law the owner "cannot now claim that he can violate the conditions without forfeiting his right to the conditional [zoning approval]." *Id.* at 578. Similarly, the case of *Jefferson National Bank at Sunny Isles v. Metropolitan Dade County*, 271 So.2d 207 (Fla. 3d DCA 1972), was cited by the Florida court at App. 59 to negate Agripost's estoppel claim. As demonstrated in the Petition, estoppel is the equivalent of a taking of a vested property right under Florida zoning law. Pet. at 19 n.11.

**3) *Lucas* – The Eleventh Circuit opinion negates the "takings" principles of *Lucas*.**

In *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2899 (1992), this Court reaffirmed traditional state and federal case law recognizing the truism that one cannot assert a taking for the alleged deprivation of rights that were "not part of his title to begin with." Although there is nothing new about this holding, Agripost would have this Court accept that because *Lucas* was decided after the Florida circuit court opinion, the Florida circuit court could not have applied the time-honored principles recognized therein. Br. at 10.

Contrary to Agripost's distortion, the County does not contend that the Florida court relied upon *Lucas*, itself, but upon the pre-existing state and federal law confirmed therein. Furthermore, the Eleventh Circuit's subsequent rejection of the Florida adjudication, which adjudication was predicated upon these longstanding legal principles, *does* conflict with *Lucas* itself. Finally, the Eleventh Circuit's disallowance of a state court's right to reverse confiscatory zoning and avoid a permanent taking establishes a second, independent conflict with *Lucas*. *See* 112 S. Ct. at 2901, n.17, Pet. at 8.

**4) *Williamson County* – The exercise of jurisdiction where it is found to be lacking is the antithesis of *Williamson County*.**

Perhaps the most patent conflict of the Eleventh Circuit opinion is with the case of *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), which holds that a district court lacks subject matter

jurisdiction altogether over an unripe taking claim. Understandably, Agripost wishes to avoid this patent conflict by labeling it "not relevant," Br. at 10, and by distorting the issues raised by the Petition as involving standing and *appellate* jurisdiction as opposed to district court jurisdiction. Br. at 12-13.

The Eleventh Circuit affirmed as to both the district court's *lack* of jurisdiction over the taking claim and that court's *exercise* of jurisdiction over the County's defenses to that very claim. *See* App. 10, n.11. This is in clear conflict with both *Williamson County* and the Supreme Court's strict holdings that lack of jurisdiction deprives the district court of the power to adjudicate the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998), discussed at Pet. 22. Not only are *Williamson County* and *Steel Company* highly relevant, but also they underscore the clear, unequivocal conflict of the Eleventh Circuit opinion with Supreme Court case law on a matter of great importance going both to the essence of a federal district court's power and to the foundation of our constitutional, federal structure of government. Moreover, the improper exercise of jurisdiction enabled by this conflict leads directly to, and exacerbates, the additional conflicts with *First English*, *Rooker-Feldman*, and *Lucas* discussed *supra*.

Finally, Agripost's contention that because the case was ultimately dismissed without prejudice it is of little consequence, Br. at 8, runs directly counter to Agripost's own cited cases of *Disher v. Information Resources, Inc.*, 873 F.2d 136, 138-39 (7th Cir. 1989) and *Grayson v. K-Mart Corp.*, 79 F.3d 1086, 1095 n.10 (11th Cir. 1996), Br. at 13,

which recognize the aggrievement of a party in having to face repeated litigation.

## CONCLUSION

In opposing certiorari review, Agripost finds nothing to rely upon other than the demonstrably erroneous and conflicting Eleventh Circuit opinion itself. This is perhaps the best indication that the conflicts identified by the Petition are both real and significant. If allowed to stand, the opinion will condone a vast expansion of federal district court jurisdiction in conflict with multiple Supreme Court decisions, all to the prejudice of both Miami-Dade County and innumerable other state and local governments.

Respectfully submitted,

HOLLAND & KNIGHT
Suite 3000
701 Brickell Avenue
Miami, Florida 33101-5441
Phone: (305) 374-8500

DANIEL S. PEARSON
Florida Bar Number 062079

ROBERT A. GINSBURG
Miami-Dade County
Attorney
Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Phone: (305) 375-3771
Fax: (305) 375-5634

ROBERT L. KRAWCHECK
Florida Bar Number 128019

*and*

JAMES J. ALLEN
Florida Bar Number 317861